

**UNIVERSITY PROGRAM NON-COMMERCIAL LICENSE AGREEMENT**

This University Program Non-Commercial License Agreement (“**License Agreement**”), and is entered into by and between Wind River Systems, Inc. (“Wind River”) and Customer, and is made effective as of the date last signed by the parties below (“**Effective Date**”).

**Customer Related Information:**

<b>Customer Name and Address:</b>	Enter University Entity Name (“Customer”) Enter University Address
<b>Customer Contact</b>	Name Phone Email
<b>Development Location:</b>	Address City, State Zip/Postal Code Country

**Wind River Product Description, Fees & Related Information:**

<b>License Type:</b>	Subscription
<b>License Term:</b>	<input type="checkbox"/> One (1) year commencing on the Effective Date <input type="checkbox"/> Other: _____
<b>License Restrictions:</b>	Project: [Project Name & Description] Target Application: [Target Application Name & Description -or- NA]

Line #	Product #	Product Description	License Seat Quantity
1			
2			

**Additional Terms:**

None

**IN WITNESS WHEREOF**, the parties' authorized representatives have executed this License Agreement.

**WIND RIVER**

**CUSTOMER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

# UNIVERSITY PROGRAM NON-COMMERCIAL LICENSE AGREEMENT TERMS AND CONDITIONS

Wind River and Customer are referred to herein individually as a "Party" or, together, as the "Parties". The Parties, in consideration of the mutual covenants contained in this **UNIVERSITY NON-COMMERCIAL LICENSE AGREEMENT**, and for other good and valuable consideration, the receipt and sufficiency of which they acknowledge, agree as follows.

## 1. DEFINITIONS.

1.1 **"Attachment"** means an attachment to this Agreement that the Parties may elect to simultaneously or separately execute from time to time in order to detail the Software to be evaluated under the terms of this Agreement by Customer or an Affiliate of Customer.

1.2 **"Authorized Site"** means the specific address of Customer's facility consisting of a single building or multiple buildings on a contiguous campus where the Software is physically located, as specified in an Order Form.

1.3 **"Confidential Information"** means: (a) the Software; (b) the technology, ideas, know how, documentation, processes, algorithms, and trade secrets embodied in the Software; (c) all software keys related to the Software; and (d) any other information, whether disclosed orally, in writing or on magnetic media, that: (i) is identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure, and, if disclosed orally, is confirmed in writing as confidential within thirty (30) days of the date of initial disclosure, or (ii) should reasonably be understood to be confidential based on the nature and circumstances of the disclosure. Confidential Information does not include any information that Customer reasonably demonstrates is: (i) published or otherwise available to the public other than by breach of this Agreement by Customer; (ii) rightfully received by Customer from a third party without confidentiality limitations; (iii) independently developed by Customer as evidenced by appropriate records; (iv) known to Customer prior to its first receipt from Wind River as evidenced by appropriate records; (v) hereinafter disclosed by Wind River to a third party without restriction on disclosure; or (vi) approved for public release by written authorization of Wind River.

1.4 **"Control"** means: (a) ownership of more than fifty percent (50%) of the outstanding stock or securities entitled to vote for the election of directors or similar managing authority of the subject entity; (b) ownership of more than fifty percent (50%) of the ownership interest that represents the right to make decisions for the subject entity; (c) any other ability to elect more than half of the board of directors or similar managing authority of the subject entity, whether by contract or otherwise; or, (iv) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the subject entity whether through the ownership of voting securities, though other voting rights, by contract or otherwise.

1.5 **"Device Model"** means a software model of a specific target architecture device or family of devices used for modeling the internal behavior and programming interfaces of the device(s). Device Models provided by Wind River are considered "Software" under the terms of this Agreement.

1.6 **"Feedback"** means the results of any evaluation of the Software by Customer, including Customer's opinions, observations, comments, criticisms, and suggested improvements, whether in written or oral form.

1.7 **"License Effective Date"** means either (i) the last date an Attachment is signed between the parties, if a specific start date is not otherwise specified on the Attachment, or (ii) the date the Software is installed by Customer, if the Software is ordered by way of an Order Form.

1.8 **"Mandatory Open Source License"** mean the GNU General Public License, the GNU Lesser General Public License, and other substantially similar open source licenses that preclude the imposition of further restrictions on copying, modifying or redistributing materials subject to their terms.

1.9 **"Modifications"** mean, without limitation: (a) all adaptations, modifications, improvements, enhancements, revisions or interface elements created from the Software, and (b) any "derivative" work of the Software as defined in U.S. Copyright Law, 17 U.S.C. §101 et seq.

1.10 **"Order Form"** means the Wind River final sales quote, Attachment, online order or registration form which details Wind River's offer to license Software to Customer as well as other business restrictions related to Customer's use of the Software.

1.11 **"Project"** means the research project that is set forth in this Agreement, and that (i) is conducted by a specific department of Customer as part of a specific course of Customer or in a specific computer lab of Customer; and (ii) is non-funded or is funded by a non-profit organization.

1.12 **"Software"** means (a) the computer programming code and accompanying documentation provided by Wind River under this Agreement, and (b) any Modifications thereto made by Wind River and delivered to Customer or made by or on behalf of Customer in accordance with this Agreement. "Software" includes without limitation the operating system, tools, Source Code or any combination of these, however it excludes any computer programming code to the extent such code is subject to a Mandatory Open Source License.

1.13 **"Source Code"** means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of interpretation or compilation.

1.14 **"Third Party Software"** means those portions of the Software, if any, which are owned or controlled by third parties and licensed to Wind River, such as Software subject to an open source license, including but not limited to any open source license listed on the Open Source Initiative website (<http://www.opensource.org>).

2. **LICENSE.** Subject to Customer's compliance with the terms and conditions of this License Agreement, Wind River hereby grants to Customer a restricted, personal, non-transferable, non-exclusive, internal-use license: (a) to reproduce and use one copy of the Software per license seat for the sole purpose of internally evaluating the Software, solely for either (i) the number of licensed concurrent Users located at or (ii) on the number of "Node-locked hosts" licensed and located at the Authorized Site, where the "Node" means the host computer where both the Software and license management file are physically installed; (b) if Customer has licensed Source Code, to modify the Software Source Code solely to the extent necessary to evaluate the use of the Software in the potential development of prospective Customer products, or, if Simics Software is included, to modify the Software Source Code solely to the extent necessary to evaluate the use of the Software to support the development of a Device Model in connection with the Project and to use the Software Source Code solely in conjunction with the Software and (c) to reproduce the Software for archive purposes, consistent with Customer's standard archive procedures.

## 3. RESTRICTIONS.

3.1 The Software shall be handled, used and stored, solely at the Authorized Site. Although the Software may be used either from a single machine or a server, there shall be no external network

access of the Software (i.e., by any computers or terminals not located at the Authorized Site).

- 3.2 Access to the Software will be limited to employee/faculty and registered students of Customer who (i) require access to the Software for the purposes set forth in Section 2, (License) and (ii) have signed an employee agreement or similar agreement in which such employee or student agrees to protect third party confidential information with terms no less stringent than those set forth in this License Agreement. Customer agrees that any breach by any employee or student of such obligations under such confidentiality agreements will also constitute a breach by Customer hereunder. For the purposes of this License Agreement, the definition of "employee" will be as defined for purposes of the U.S. Copyright Act and expressly excludes independent contractors. Customer will maintain and, upon Wind River's reasonable request, provide to Wind River, the names of all employees and students who have had access to the Software.
- 3.3 Customer shall not: (a) use the Software or any portion thereof for any productive or commercial purpose; (b) modify, create derivative works of, translate, reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or attempt to derive the Source Code of any of the Software provided to Customer in object code or other machine executable form; (c) market, distribute or otherwise transfer copies of the Software to others; (d) rent, lease or loan the Software; (e) reproduce the Software other than as specified in Section 2; (f) distribute externally or to any third party any communication that compares the features, functions or performance characteristics of the Software with any other product of Customer or any third party; or (g) modify, distribute or otherwise use the Software in any manner that causes any portion of the Software that is not already subject to Mandatory Open Source License to become subject to such license.
- 3.4 Customer shall use its best efforts to protect the Software from unauthorized access, reproduction, disclosure or use. In the event Customer becomes aware of any unauthorized use or disclosure of Software, Customer shall notify Wind River immediately in writing and shall give full cooperation, at Customer's expense, to minimize the effects of such unauthorized use or disclosure.
- 3.5 **THIRD PARTY SOFTWARE.** Third Party Software may be subject to additional terms, which terms may be set forth in the Software Source Code and the third party notice file(s) that may accompany the Software. Customer acknowledges and agrees that its use of Third Party Software is subject to its compliance with any such additional terms.
- 3.6 **UPON TRANSFER OF THE SOFTWARE OR ANY COPY THEREOF TO ANOTHER PARTY, THE LICENSE WILL AUTOMATICALLY TERMINATE.**
- 3.7 **AFFILIATE USE.** Subject to the terms and conditions of this Agreement, Customer's Affiliates may license Software under this Agreement, provided that the Affiliate enters into an appropriate Attachment which: (a) includes the name and address of the Affiliate; and (b) expressly incorporates the terms and conditions of this Agreement and is signed by the Affiliate. Customer hereby expressly agrees that any breach of the terms and conditions of this Agreement by any of Customer's Affiliates, will also constitute a breach by Customer of this Agreement.
4. **TESTING; USE OF TEST RESULTS.** Customer may evaluate the Software in Customer's day-to-day business environment and in production-like activities, but will not use the Software in critical operations or for any commercial purpose. Customer may disclose any Feedback from its evaluations only to Wind River. Should Customer provide Wind River with Feedback, Wind River will have the right to use such Feedback and related information in any manner it deems appropriate. Customer agrees that if its evaluation reveals any security vulnerability or flaw in the Software, Customer will promptly disclose such information to Wind River, and will not disclose such information to third parties without Wind River's prior

consent. Any disclosure to third parties shall be in coordination with Wind River.

5. **CONFIDENTIAL INFORMATION.** Customer will not use or disclose any Confidential Information, except as expressly authorized by this Agreement, and will protect all such Confidential Information using the same degree of care that Customer uses with respect to its own proprietary information, but in no event less than reasonable care. If Confidential Information must be disclosed to a third party by reason of legal, accounting or regulatory requirements beyond the reasonable control of Customer, Customer will: (a) assert the confidential nature of the information in the action or proceeding; (b) promptly notify Wind River of the order or request; and (c) permit Wind River (at its own expense) to seek an appropriate protective order.
6. **OWNERSHIP.** Wind River and its licensors shall retain exclusive ownership of all worldwide Intellectual Property Rights in and to the Software, including any additions or Modifications thereto proposed, suggested or made by Customer to Wind River or the results of any other collaboration between Wind River and Customer during the term of this Agreement. All rights in and to the Software not expressly granted to Customer in this Agreement are expressly reserved for Wind River and its licensors. "Intellectual Property Rights" means all copyrights, trade secrets, trademarks, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide.
7. **TERM AND TERMINATION.** The term of this Agreement will commence upon the Effective Date and continue until terminated. Either party may terminate this Agreement upon ten (10) days written notice to the other upon expiration or termination of all Software licenses under this Agreement. Wind River may terminate this Agreement immediately upon breach of this Agreement by Customer. The term for Customer's license to the Software ("**Evaluation Term**") shall automatically expire thirty (30) days from the License Effective Date, unless otherwise specified in the applicable Order Form. Upon expiration or termination, Customer will not use the Software for any purpose whatsoever, and will immediately destroy or return to Wind River all material belonging to Wind River or its licensors, including without limitation all Software and Wind River Confidential Information then in Customer's possession and promptly certify to Wind River in writing that Customer has completed the foregoing actions. The remedies herein shall be cumulative and in addition to any other remedies available to Wind River. The following Sections shall survive any termination of this Agreement: Sections 1, 5, 6, 7, 9, 10, 11, 12, 13 and 14.
8. **KEYS AND ACCESS.** Wind River agrees to provide to Customer those Software keys which are reasonably necessary to permit Customer to gain access to Software contained on media shipped to Customer and which software has been properly licensed to Customer pursuant to an Order Form. All such software keys are the Confidential Information of Wind River. Notwithstanding anything to the contrary in this Agreement, Customer hereby acknowledges that Customer shall have no right or license to any software shipped to Customer on media as provided above which software is not properly licensed pursuant to an Order Form, that any such software is included therein solely as a matter of administrative convenience, and Customer further agrees not to attempt to gain access to, or permit any third party to attempt to gain access to, such software. Customer acknowledges that this Software may contain functionality that will cause it to stop operating on a certain date.
9. **AUDIT.** Customer agrees to maintain accurate written records of the location and use of all copies of the Software in Customer's possession. To ensure compliance with the terms of this Agreement Wind River shall have the right during the term of this Agreement and for six (6) months thereafter, exercisable upon reasonable notice, to conduct an inspection and audit of such records and to obtain true and correct photocopies of such records, during Customer's regular business hours at Customer's offices, and in such a manner as not to interfere unreasonably with Customer's normal business activities.

- 10. DISCLAIMER.** THE SOFTWARE IS LICENSED FOR CUSTOMER'S TEMPORARY NON-COMMERCIAL EVALUATION USE "AS IS" AND WIND RIVER AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WIND RIVER, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. IN THE EVENT A LICENSE TO PRE-RELEASE SOFTWARE IS PROVIDED UNDER THIS AGREEMENT CUSTOMER UNDERSTANDS AND AGREES THAT WIND RIVER HAS NO OBLIGATION TO RELEASE A GENERALLY OR COMMERCIALY AVAILABLE VERSION OF SUCH SOFTWARE.
- 11. LIMITATION OF LIABILITY.** WIND RIVER AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR THE LIKE) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF WIND RIVER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL WIND RIVER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED \$50.00 OR THE AMOUNT CUSTOMER ACTUALLY PAID WIND RIVER UNDER THIS AGREEMENT (IF ANY).THE WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN WIND RIVER AND CUSTOMER. WIND RIVER WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE WITHOUT SUCH LIMITATIONS.
- 12. SUPPORT.** Installation assistance on the Software is available online for up to ninety (90) days from the receipt date of the Software. Only one (1) individual may contact Wind River for installation support. The name of the designated individual shall be listed on the "Addendum to the Proposal Form". Continued support is available only with the purchase of an annual maintenance and support agreement.
- 13. EXPORT CONTROL.** All software and technical information delivered under this Agreement are subject to U.S. Export Administration Regulations (the "USEAR") and may be subject to export, re-export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations. Customer will not export or re-export the software and technical information, directly or indirectly, to: (1) any countries that are subject to US export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria); (2) any end user who Customer knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in US export transactions by any federal agency of the US government. Some of Wind River's products are classified as "restricted" encryption products under Section 740.17(b)(2) of the USEAR and may not be exported or re-exported to government end-users (as defined in Section 772 of the USEAR) outside the countries listed in Supplement No. 3 to Part 740 of the USEAR without authorization from the U.S. government.
- 14. NOTICES.** All notices under this Agreement will be: (a) in writing; (b) delivered by personal delivery or certified or registered mail, return receipt requested, and deemed given upon personal delivery or five (5) days after deposit in the mail. Notices to Wind River will be sent to Wind River Systems, Inc., General Counsel, Legal Affairs, 500 Wind River Way, Alameda, CA 94501, USA (or such other address designated in writing by Wind River), and notices to Customer will be sent to the address set forth in the preamble of this Agreement or such other address as Customer or Customer may designate for itself in an Order Form.
- 15. USE OF CUSTOMER'S NAME.** Wind River may freely use and publicize information regarding the Software donation to Customer and the Customer's use of the Software including without limitation any results of such use and any reports and documentation provided to Wind River pursuant to this Section.
- 16. GENERAL.** This Agreement will be governed in all respects by the laws of the State of Delaware as applied to contracts entered into between residents thereof and performed entirely within the State. All disputes arising under this Agreement will be brought exclusively in the State of Delaware or of the Federal courts sitting therein, provided, however, that the parties will be entitled to seek injunctive relief in the appropriate forum. Wind River, Customer consent to the personal jurisdiction of the above courts. If any provision or provisions of this Agreement are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby. This Agreement may not be assigned, sub-licensed, or otherwise transferred by Customer without Wind River's prior written consent. Nothing contained herein shall be construed as creating any agency, employment relationship, partnership, principal-agent or other form of joint enterprise between the parties. This Agreement constitutes the complete, final and exclusive statement of the agreement between Wind River and Customer, which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. No waiver, alteration or modification of the provisions of this Agreement will be valid unless made in writing and signed by a corporate officer of Wind River. Each party agrees that use of pre-printed forms, such as purchase orders or acknowledgements, is for convenience only and all terms and conditions stated thereon are void and of no effect.