

PROFESSIONAL SERVICES TERMS AND CONDITIONS

THESE PROFESSIONAL SERVICES TERMS AND CONDITIONS (“Services Addendum”) set forth the terms and conditions pursuant to which Wind River will provide Customer with engineering services specified in a Statement of Work signed by the parties (“**SOW**”). This Services Addendum attaches to the Wind River Master Software License Agreement entered into between the parties (“License Agreement”). The terms and conditions of the License Agreement are hereby incorporated by reference into this Services Addendum. The parties agree as follows:

1. DEFINITIONS.

- 1.1 “**Assumptions**” mean the mutually assumed facts relied upon in developing a SOW, and detailed therein.
- 1.2 “**Customer Supplied Prerequisites**” or “**CSPs**” mean those items (e.g., information, hardware, software and license rights) that Customer is responsible for delivering to Wind River.
- 1.3 “**Deliverables**” mean the items (e.g., hardware, software, documents and data) to be delivered to Customer by Wind River as a result of the Services, as detailed in a SOW.
- 1.4 “**Open Source Software**” mean any software licensed under an open source license, including without limitation, any open source license listed on the Open Source Initiative website (www.opensource.org).
- 1.5 “**Third Party Materials**” mean any software, materials, data, or other items (including Open Source Software) owned by a third party which is obtained by Wind River or by Customer and used in the performance of the Services or incorporated into any of the Deliverables.
- 1.6 “**Wind River Standard Product**” means any of Wind River’s standard published or otherwise commercially licensed or distributed products.

2. **SERVICES.** Wind River shall use reasonable commercial efforts to provide the services set forth in the SOW in accordance with the terms set forth hereunder (“**Services**”). All Services shall be performed by employees, independent consultants, or subcontractors of Wind River (“**Personnel**”). Wind River shall exclusively determine the method, details and means of performing the Services, including without limitation, utilizing Personnel which Wind River deems appropriate to perform the Services. Customer may inspect the work performed by Wind River upon reasonable notice, and may propose modifications in accordance with Section 4 (Change Control Process). Customer will provide Wind River with information or assistance reasonably necessary to facilitate the proper and timely discharge by Wind River of its obligations under this Services Addendum, and such information and assistance shall be deemed a Customer Supplied Prerequisite.

3. **FEES, EXPENSES.** Unless otherwise agreed in the SOW, fees shall be paid in accordance with the payment terms in the License Agreement. Unless otherwise indicated in the SOW, for any travel that is pre-approved by Customer, Customer will reimburse Wind River for actual travel and living expenses reasonably incurred in performance of the Services. For Services charged on a time and materials basis, travel time for Personnel will be billed at the rates outlined in the SOW (or Wind River’s then current standard published hourly rates if none are specified). Customer shall also reimburse Wind River for any actual out-of-pocket expenses reasonably incurred by Wind River in the performance of the Services. Wind River will give Customer access to receipts, ledgers and similar records reasonably necessary for Customer to verify the amount and nature of such expenses. Delivery of all items to Customer will be “ex works” (see Incoterms 2000), Wind River’s initial shipping point.

4. **CHANGE CONTROL PROCESS.** Either party may request changes to the SOW upon notice to the other party. The parties will use Wind River’s project change request (“PCR”) form for this purpose. If the changes proposed by Customer are feasible in Wind River’s opinion, Wind River will submit an estimate of the effort required to evaluate Customer’s request, including any fees or expenses associated with such effort. If the request is made by Wind River, Wind River will submit an estimate of the effort required to generate a reasonably detailed proposal. Customer will sign or reject each PCR within ten (10) working days, and return it to Wind River. In the event the Parties are unable to resolve any outstanding issues involving a PCR within five (5) working days after Customer rejects the PCR, Wind River shall proceed with the Services as set forth in the SOW without incorporating any changes proposed in the PCR; provided however, Wind River shall not be liable for any schedule delays resulting from the change control process.

5. **DELAYS, INACCURATE INFORMATION.** If (a) Customer fails to timely provide a CSP (including any information or assistance required by Wind River), (b) a CSP does not perform as intended, (c) Customer provides inaccurate,

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incomplete or misleading information to Wind River, (d) an Assumption is incorrect, or (e) out-of-scope work is required; then Wind River shall notify Customer (i) of the impact to the Services, or (ii) that Wind River cannot determine the impact without expending additional effort, and Customer shall pay Wind River the rates set forth in the SOW (or Wind River's then current standard published hourly rates if none are specified) for such additional effort. Wind River will submit a PCR to Customer setting forth Wind River's good faith estimate of the impact of items (a) – (e) on the fees and/or schedule specified in a SOW. Customer shall have ten (10) working days to accept or reject each PCR; provided that, if rejected by Customer, the parties shall have five (5) working days to resolve the outstanding issues, and if unable to do so, either party may terminate this Services Addendum upon written notice to the other Party.

6. TERM AND TERMINATION. The term of this Services Addendum will commence upon the Effective Date and continue until terminated as set forth herein. Either party may terminate this Services Addendum, or an individual SOW, immediately upon providing written notice to the other party, in the event of a material breach of the other party, which breach is curable and has remained uncured for a period of sixty (60) days from the date of written notice; provided that, the written notice must describe the breach in reasonable detail, and provided further, that the cure period for Customer's failure to pay any amounts due to Wind River shall be fifteen (15) days. Either party may terminate this Services Addendum upon providing written notice to the other party if all SOWs have been completed, or, pursuant to Section 5 (Delays, Inaccurate Information). Customer may terminate this Services Addendum or an individual SOW for any reason upon thirty (30) days written notice to Wind River. If this Services Addendum or a SOW is terminated prior to completion of Services charged on a time and materials basis, Customer shall compensate Wind River for all Services performed and all expenses incurred prior to termination, as well as any unavoidable costs. If this Services Addendum or a SOW is terminated prior to completion of Services charged on a fixed price basis, Customer shall make all milestone payments due on or before the date Wind River receives Customer's notice of termination, as well as the next milestone payment due. Within sixty (60) days of the date of termination for any reason, Wind River shall invoice Customer for all outstanding fees, expenses and costs. The following provisions shall survive any expiration or termination of this Services Addendum: Sections 1, 3, 6-10, and 12-15.

7. OWNERSHIP. LICENSE. Wind River and its licensors retain ownership of, and all right, title and interest (including all Intellectual Property Rights) in any Deliverable developed hereunder. All Deliverables developed under this Services Addendum and the SOW, shall be deemed "Software" under the License Agreement. Except as otherwise provided herein, all terms in the License Agreement shall apply to such Deliverables (including, without limitation, license grants, and ownership, but specifically excluding Wind River indemnity obligations, warranties, or Support). Customer's foregoing license rights shall pertain only to the final version of any Deliverable developed under this Services Addendum. With respect to any interim Deliverables, Customer's rights in such Deliverable shall be limited to internal noncommercial use solely for the purpose of evaluating the Deliverable. All rights not expressly granted to Customer in this Services Addendum or in the SOW are reserved for Wind River and its licensors.

8. THIRD PARTY MATERIALS. Notwithstanding anything to the contrary in Section 7 (Ownership. License.), Customer's license rights and obligations in and to any portions of the Deliverable which consist of Third Party Materials shall be determined in accordance with the applicable agreement or license governing such Third Party Material, regardless of whether obtained with the assistance of Wind River. However, to the extent permitted, Customer shall also comply with any additional obligations under this Services Addendum with respect to the Deliverables. Nothing in this Services Addendum imposes or purports to impose any restriction on copying, modifying or distributing any portion of the Deliverable licensed under a Mandatory Open Source License.

9. CUSTOMER SUPPLIED PREREQUISITES. Customer grants Wind River a nonexclusive, royalty-free license to Wind River and its Personnel to make, have made, use, modify, create derivative works, perform, display, execute and reproduce any CSP solely for the purpose of performing the obligations under this Services Addendum or in the SOW. Customer shall obtain for Wind River and its Personnel all licenses and other rights required to use any Third Party Materials provided together with or as a CSP. All of Customer's rights not expressly granted to Wind River in this Services Addendum or in an SOW with respect to a CSP are reserved for Customer and its licensors.

10. WIND RIVER STANDARD PRODUCT. Any rights or licenses to Wind River Standard Products shall be determined exclusively by the terms of the License Agreement. No rights to any Wind River Standard Product are granted to Customer under this Services Addendum or a SOW.

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11. **ACCEPTANCE.** The SOW shall contain the acceptance approach for the Deliverables being developed under the SOW, which may consist of acceptance criteria set forth in the SOW or an acceptance test plan ("**ATP**") that will be developed under the SOW and mutually agreed to by the parties. Except as otherwise set forth in the SOW, Wind River shall deliver each Deliverable to Customer once such Deliverable meets the applicable acceptance criteria or ATP and, Customer shall have then ten (10) days after receipt of the Deliverable to verify that the Deliverable meets the acceptance criteria or ATP. Unless Customer notifies Wind River in writing within ten (10) days of delivery to Customer of any non-compliance of the Deliverable with the acceptance criteria or ATP, the Deliverable shall be deemed accepted by Customer. If Customer notifies Wind River within the ten (10) day period of a non-compliance of the Deliverable with the acceptance criteria or ATP, Wind River will use commercially reasonable efforts to remedy the non-compliance, and final acceptance shall occur upon the Deliverable successfully passing all acceptance criteria or ATP, as applicable. If no acceptance criteria or ATP are specified in the SOW, the Deliverable shall be deemed accepted by Customer upon delivery by Wind River.

12. **EXPORT.** All software, Deliverables, and technical information delivered under this Services Addendum are subject to U.S. Export Administration Regulations (the "**EAR**") and may be subject to export, re-export or import regulations in other countries. Customer will not use, distribute, transfer, or transmit the Deliverables, software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations. Customer will not, without authorization from the U.S. government, export or re-export the Deliverables, 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. Customer represents and warrants that any item or data Customer provides to Wind River is not strictly designed or modified for military or satellite application. If requested by Wind River, the Customer agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.

13. **CONFIDENTIALITY.**

13.1 "**Confidential Information**" shall mean: (a) Deliverables developed under the applicable SOW; (b) the technology, ideas, know how, processes, algorithms, documentation and trade secrets embodied therein; and (c) other information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") hereunder, whether disclosed orally, in writing or other tangible form, that is identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure, or, would be reasonably understood to be confidential based upon the nature of the information disclosed and the circumstances of the disclosure. Confidential Information does not include any information which is: (i) published or otherwise available to the public other than by breach of this Services Addendum; (ii) rightfully received by the Receiving Party from a third party without confidentiality limitations; (iii) independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iv) known to the Receiving Party prior to its first receipt from the Disclosing Party as evidenced by appropriate records; (v) hereinafter disclosed by the Disclosing Party to a third party without restriction on disclosure; or (vi) approved for public release by written authorization of the Disclosing Party. Each party agrees to hold the other's Confidential Information in confidence, and not to use or disclose such Confidential Information other than in connection with performance of obligations hereunder. The Parties' obligations with respect to Confidential Information shall survive the expiration or termination of this Services Addendum for a period of five (5) years after the date of disclosure of such Confidential Information, provided that, any obligations with respect to any source code contained in any Deliverable or Wind River Standard Product shall survive in perpetuity.

13.2 **Residual Knowledge.** This Services Addendum shall not limit either party's right to independently develop or acquire products without use of the other party's Confidential Information, or to license or market any products. Confidential Information shall not include the "Residuals" resulting from access to Confidential Information. "**Residuals**" means information in intangible form that may be retained in the unaided memories of the Receiving Party's employees, independent contractors or subcontractors who have had access to the Confidential Information. A memory will be considered unaided if the individual has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it. Neither party is obligated to restrict the assignment of such persons resulting from the use of Residuals.

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14. LIMITATION ON LIABILITY. IN NO EVENT WILL WIND RIVER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS SERVICES ADDENDUM EXCEED THE AMOUNTS PAID TO WIND RIVER BY CUSTOMER UNDER THE APPLICABLE STATEMENT OF WORK FROM WHICH LIABILITY AROSE.

15. GENERAL. The License Agreement, this Services Addendum and the signed SOW constitute the entire agreement between Customer and Wind River and supersedes all prior oral or written communications or agreements between the parties with respect to the subject matter hereof. In the event of a conflict between the terms of the License Agreement and this Services Addendum, the terms of this Services Addendum shall control and prevail with respect to the Services provided hereunder, and resulting Deliverables. Additional or different terms and conditions included or proposed by Customer in any RFQ, RFP, purchase order or any other instrument issued by Customer in connection with this Services Addendum shall be of no force or effect and are rejected by Wind River.