

# WIND RIVER

## University Program

### Agreement Applicable to University Partners

The University Program Agreement ("Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ ("the Effective Date") between **Wind River Systems, Inc.** (WRS), a Delaware corporation having a place of business at 500 Wind River Way, Alameda, California 94501 ("WRS"), and \_\_\_\_\_ ("University Partner") located in \_\_\_\_\_.

This Agreement consists of this page ("Signature Page"), the attached agreement (which also may be found as a shrink-wrap agreement on the back of the WRS Product CD-ROM), and the "Addendum to the University Grant Proposal Form". This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements between the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by the parties that refers explicitly to this Agreement. If a provision of this Agreement is unenforceable or invalid, the provision shall be revised so as to best accomplish the objectives of the parties.

1. The University Partner is authorized to use the specific programs donated by WRS (the "Donated Products") as specified on the "Addendum to the Proposal Form" and only for the specific number of workstations listed on the "Addendum to the Proposal Form."
2. This license agreement is granted for a specific department, a declared course, or a specific computer lab, as outlined in the "Addendum to the Proposal Form." Each location where the Donated Products are used needs to be separately registered under this Agreement.
3. Only registered students and professors of the specified department/course/ computer lab (as applicable) may use the Donated Products. The University Partner agrees to take all necessary measures to prevent unauthorized access to the Donated Products. The Donated Products may only be used for research projects that are non-funded, or funded by a non-profit organization. If the intended research is or becomes funded by a corporation, private donor, or other for-profit organization, a regular development license must be purchased from WRS.
  - 3.1. If the University Partner develops a product using Donated Products that it wishes to market, the University Partner shall contact WRS to purchase and obtain a Target Application License.
4. Installation assistance on the Donated Products is available by telephone for up to ninety (90) days from receipt date of the Donated Products. Only one (1) individual may telephone WRS for installation support. The name of this designated individual shall be listed on the "Addendum to the Proposal Form." Continued support is available with the purchase of an annual maintenance and support agreement. Please contact WRS for further information.
5. The University Partner may use the WRS Donated Product for four years from the Effective Date. After that period has expired, all WRS Donated Products must be destroyed or erased and the University Partner shall promptly certify to WRS that it has done so.
  - 5.1. Should the University Partner wish to continue to use the Donated Products beyond the expiration date, a new grant application must be submitted.
6. The University Partner shall maintain a complete, clear, and accurate record of (a) the location of the Donated Products and each copy it has in its possession (b) the students and/or professors using the Donated Products, and (c) the capacity in which the Donated Product is being used. To ensure compliance with the terms of this Agreement, WRS shall have the right to conduct an inspection and audit all relevant records in such a manner not to interfere with ongoing university activities.
7. The University Partner agrees that Wind River may freely publicize information regarding the University Partner's use of the Donated Products including any results of such use.

**IN WITNESS WHEREOF**, the University Partner's authorized representatives has executed this Agreement.

Agreed To: University Partner

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Institution: \_\_\_\_\_

Date: \_\_\_\_\_

BY SIGNING THE SIGNATURE PAGE, OPENING THE PACKAGE CONTAINING THE WIND RIVER SOFTWARE PRODUCT OR INSTALLING THE WIND RIVER SOFTWARE PRODUCT PROVIDED TO YOU, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. DO NOT SIGN THE SIGNATURE PAGE, OPEN THE PACKAGE CONTAINING THE WIND RIVER SOFTWARE PRODUCT OR INSTALL THE WIND RIVER SOFTWARE PRODUCT UNTIL YOU HAVE CAREFULLY READ AND AGREED TO THE FOLLOWING TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE SOFTWARE AND ACCOMPANYING DOCUMENTATION AND THE PRICE YOU PAID FOR THE SOFTWARE WILL BE REFUNDED.

**License and Restrictions:** Wind River Systems ("WRS") grants you the non-exclusive, non-transferable right to use the software program on this CD-ROM, including any documentation in hard or soft copy (collectively, the "Software"), only: 1) for the number of users; 2) at the street address; 3) on the type of computer; and for the particular project, which are specified in the Addendum to Grant Proposal. You must purchase additional licenses for additional users, for other addresses, for a different type of computer, or for other projects. You will not use, copy, modify, rent, lease, loan, sell, transfer, market, distribute, or electronically transfer the Software from one computer to another over a network except as provided in this Agreement. Unauthorized copying of the software and accompanying documentation is expressly forbidden. You may not use the Software from multiple locations of a multi-user or networked system at any time. The Software contains trade secrets of WRS and its licensors and in order to protect them, you may not decompile, reverse engineer, disassemble or otherwise reproduce the Software to a human perceivable form or disclose them to a third party. NOTE: THIS LICENSE DOES NOT PROVIDE THE RIGHT TO DISTRIBUTE ANY PORTION OF THE SOFTWARE IN ANY PRODUCT. Please see your Wind River sales representative to obtain pricing and a license for target distribution. The Software licensed under this Agreement may contain or be derived from materials of third party licensors ("Third Party Software"). In addition to the terms of this Agreement, such Third Party Software may be subject to additional terms, which, if any, are set forth in the Software source code and/or Third Party Software file that accompanies the Software. Notwithstanding anything in this Section to the contrary, the definition of Software excludes all materials provided by Wind River to you to the extent such materials are subject to the GNU General Public License, GNU Lesser General Public License, Sleepycat license, or any other substantially similar open source software license ("GNU-Type Materials"). GNU-Type Materials are not subject to the terms of this Agreement, and are licensed to you solely under the terms of applicable open source licenses.

**Confidential Information.** University Partner shall not use or disclose any WR Confidential Information, except as expressly authorized by this Agreement, and shall protect all such Confidential Information using the same degree of care that it 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 University Partner, University Partner shall: (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. "Confidential Information" means: (a) reference source code; (b) the technology, ideas, know how, documentation, processes, algorithms and trade secrets embodied in the Software; (c) all software keys; and (d) any other information, whether disclosed orally, in writing or on magnetic media, that is identified as "confidential," "proprietary" or with a similar legend at the time of such disclosure, or, if disclosed orally, is confirmed in writing as confidential within thirty (30) days of the date of initial disclosure. Confidential Information does not include any information which is: (i) published or otherwise available to the public other than by breach of this Agreement by University Partner; (ii) rightfully received by University Partner from a third party without confidential limitations; (iii) independently developed by University Partner as evidenced by appropriate records;

(iv) known to University Partner prior to its first receipt of same 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

**Warranty:** WRS warrants that the media on which the Software is delivered will be free from defects in materials or workmanship for a period of ninety (90) days from the date on which you receive such media. If during the foregoing ninety (90) day warranty period the media on which Software is delivered proves to be defective, WRS will repair or replace such media, at WRS' option, and as your sole remedy for any breach of warranty hereunder. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED. WRS EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.

**Limitation of Liability:** WRS WILL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, NOR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER UNDER THIS AGREEMENT OR OTHERWISE, IRRESPECTIVE OF WHETHER WRS HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WRS' LIABILITY HEREUNDER EXCEED THE AMOUNT YOU PAID FOR THE SOFTWARE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**Termination:** WRS may terminate this license at any time if you are in breach of any of its terms and conditions. Upon termination, you will immediately destroy the Software and will certify in writing to WRS that you have done so.

**U.S. Government Restricted Users.** The Software is a "commercial item" as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, Customer will provide the Software to U.S. Government End Users only pursuant to the terms and conditions therein.

**Export Control:** All software and technical information delivered under this Agreement are subject to U.S. Export Administration Regulations (the "EAR") and may be subject to export, re-export or import regulations in other countries. Company agrees to strictly comply with all such laws and regulations. Company 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 Company 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 EAR and may not be exported or re-exported to government end-users (as defined in Section 772 of the EAR) outside the countries listed in Supplement No. 3 to Part 740 of the EAR without authorization from the U. S. government.

**Applicable Law/General:** This Agreement is governed solely by the laws of the state of California and the United States, including patent and copyright laws. This Agreement shall not be subject to the United Nations Convention on Contracts for the International Sale of Goods. Sole jurisdiction over any dispute arising under this agreement shall be brought in the courts of the United States of America, with sole venue in Alameda County, California. This Agreement is the entire agreement between the parties regarding this subject matter, and supersedes all prior discussions, negotiations, agreements and the like. This Agreement may be modified only in writing, and signed by both parties. Purchase orders submitted by you to WRS shall be for administrative convenience only, and any printed terms therein shall have no effect unless otherwise agreed in writing by WRS.

**High Risk Activities.** This clause applies only to Tornado for Java users. The Software is not designed or intended for use in on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or in the design, construction, operation or maintenance of any nuclear facility. WRS disclaims any express or implied warranty of fitness for such uses. Licensee agrees that it will not knowingly use or license the Software for such purposes, and that it will ensure that its customers and end users of the Software are provided with a copy of the foregoing notice.