

Software License Agreement

IMPORTANT – THIS IS A LEGALLY BINDING AGREEMENT. PLEASE READ IT CAREFULLY. IF YOU DO NOT AGREE WITH THE FOLLOWING PROVISIONS, YOU MAY NOT USE THE ENCLOSED MATERIALS. AFTER YOU READ THIS LICENSE AGREEMENT, YOU WILL BE ASKED WHETHER YOU ACCEPT AND AGREE TO THE TERMS OF THIS LICENSE AGREEMENT. DO NOT CLICK “I HAVE READ AND AGREE” UNLESS: (1) YOU ARE AUTHORIZED TO ACCEPT AND AGREE TO THE TERMS OF THIS LICENSE AGREEMENT ON BEHALF OF YOURSELF AND YOUR COMPANY; AND (2) YOU INTEND TO ENTER INTO AND TO BE BOUND BY THE TERMS OF THIS LEGALLY BINDING AGREEMENT ON BEHALF OF YOURSELF AND YOUR COMPANY.

This Software License Agreement (or “Agreement”) is a legal agreement between you (“You,” either an individual or entity) and Texas Instruments Incorporated (“TI”). The “Licensed Materials” subject to this Agreement include the enclosed or downloaded software programs and documentation that accompany this Agreement and any “on-line” or electronic documentation associated with the software programs. The “Licensed Materials” include certain TI proprietary software programs that are specifically designed and licensed for execution solely and exclusively on or with a DaVinci digital signal processing device manufactured by or for TI (“TI Device”). By installing, copying or otherwise using the Licensed Materials, you agree to abide by the following provisions.

This Agreement is displayed for You to read prior to using the Licensed Materials. If You do not accept or agree with these provisions then:

- (1) do not unzip, download, copy, install or otherwise use the Licensed Materials; and
- (2) return the Licensed Materials to TI’s designated representative.

Intellectual Property, Title and Limited License Grants – The Licensed Materials contain copyrighted material, trade secrets and other proprietary information of TI and its licensors and are protected by copyright laws, international copyright treaties, and trade secret laws, as well as other intellectual property laws and treaties. The Licensed Materials are licensed, not sold to You, and can only be used in accordance with the terms of this Agreement. You agree that You will not mortgage, pledge or encumber the Licensed Materials in any way. TI and its licensors retain all title and ownership of the Licensed Materials, including all intellectual property rights in the Licensed Materials and all copies of the Licensed Materials.

a. Development License for portion of the Licensed Materials other than the MontaVista Linux Product (as defined below). Subject to the terms of this Agreement and to the extent allowed under any applicable open source licenses, TI grants to You a fully paid-up, royalty free, non-transferable, non-sublicensable, non-exclusive, non-assignable license to use the Licensed Materials (other than the MontaVista Linux Product) solely and exclusively with TI Devices and solely for developing and generating applications that execute solely and exclusively on TI Devices (“Licensee Derivatives”). The Licensed Materials may include libraries and applications software in source code form. You agree that using the Licensed Materials on any device other than a TI Device or to generate applications that execute devices other than a TI Device is a material breach of this Agreement.

b. Distribution License. Subject to the terms of this Agreement and to the extent allowed under any applicable open source licenses, TI grants to You a free, non-transferable, non-exclusive, non-assignable, worldwide, non-sublicensable license to distribute Licensee Derivatives as they are used in a product that includes a TI Device and consists of both hardware and software components, including executable versions of the software programs included with the Licensed Materials (other than MontaVista Proprietary Code) that execute solely and exclusively on TI Devices and not on devices manufactured by or for an entity other than TI, provided that such software programs are distributed solely in object or executable versions only.

c. No Other License. Notwithstanding anything to the contrary, nothing in this Agreement shall be construed as a license to any intellectual property rights of TI or its licensors other than those rights embodied in the software programs provided to You by TI as part of the Licensed Materials. EXCEPT AS PROVIDED HEREIN, NO OTHER LICENSE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, BY ESTOPPEL OR OTHERWISE, TO ANY OTHER TI INTELLECTUAL PROPERTY RIGHTS IS GRANTED HEREIN.

d. Use Restrictions. You will not disclose the Licensed Materials, or any portion or derivative thereof, to any person other than those employees, consultants and contractors whose job performance directly requires access to the Licensed Materials unless such Licensed Materials are subject to an open source license that expressly allows such a disclosure. You will not copy, publish, disclose, provide, transfer or make available the Licensed Materials, or any portion thereof, to any third party unless such Licensed Materials are subject to an open source license that expressly permits You to do so. You will not sub-license, transfer or assign the Licensed Materials or Your rights under this Agreement to any third party. Despite any other provision of this Agreement, in no event will you create derivatives of any MontaVista Proprietary Code (as defined below). Unless permitted by applicable open source licenses, You will not (a) incorporate, combine, or distribute the Licensed Materials, or any portions or derivatives thereof, with any Public Software, or (b) use Public Software in the development of any derivatives of the Licensed Materials, in such a way that would cause the Licensed Materials, or any portions or derivatives thereof, to be subject to all or part of the license obligations or other intellectual property related terms with respect to such Public Software, including but not limited to, the obligations that the Licensed Materials, or any portions or derivatives thereof, incorporated into, combined, or distributed with such Public Software (i) be disclosed or distributed in source code form, be licensed for the purpose of making derivatives of such software, or be redistributed free of charge, contrary to the terms and conditions of this Agreement, (ii) be used with devices other than TI Devices, or (iii) be otherwise used or distributed in a manner contrary to the terms and conditions of this Agreement unless such Licensed Materials are subject to an open source license that expressly permits You to do so. As used herein, "Public Software" means any software that contains, or is derived in whole or in part from, any software distributed as open source software, including but not limited to software licensed under the following or similar models: (a) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL), (b) the Artistic License (e.g., PERL), (c) the Mozilla Public License, (d) the Netscape Public License, (e) the Sun Community Source License (SCSL), (f) the Sun Industry Standards Source License (SISL), (g) the Apache Server license, (h) QT Free Edition License, (i) IBM Public License, and (j) BitKeeper.

e. Intellectual Property Rights. You acknowledge and agree that the Licensed Materials contain copyrighted material, trade secrets and other proprietary information of TI or its licensors. To protect TI and its licensors' rights in the Licensed Materials, You agree that You will not decompile, reverse engineer, disassemble or otherwise translate any of the software programs included with the Licensed Materials to a human-perceivable form nor permit any person or entity under Your employ or control to do so. In no event will You alter, remove or destroy any copyright or proprietary notice included in the Licensed Materials. TI and its licensors reserve all rights not specifically granted under this Agreement. You further acknowledge and agree that all fixes, modifications and improvements to the Licensed Materials conceived of or made by TI that are based, either in whole or in part, on Your feedback, suggestions or recommendations are the exclusive property of TI and all right, title and interest in and to all such fixes, modifications and improvements to the Licensed Materials will vest solely in TI.

Warranties and Disclaimers.

a. No Warranty of Production or Support. Nothing contained in this Agreement will be construed as a warranty or representation by TI to maintain production of any TI semiconductor device or other hardware or software with which the Licensed Materials may be used or to otherwise support the Licensed Materials in any manner. You acknowledge and agree that the Licensed Materials are provided to You "AS-IS" and that TI is under no obligation to maintain or support the Licensed Materials or to assist You in Your use of the Licensed Materials.

b. Disclaimers. TI and MontaVista Software, Inc. or its subsidiaries and affiliates ("MontaVista") do not warrant that operation of the Licensed Materials will be error-free, or that the Licensed Materials will meet Your individual requirements. THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND WITH ALL FAULTS. TI AND MONTAVISTA MAKE NO, AND DISCLAIM ALL, WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE LICENSED MATERIALS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF ANY THIRD PARTY PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY RIGHTS. TI AND MONTAVISTA DISCLAIM ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, AND NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO THE LICENSED MATERIALS OR YOUR USE OF THOSE MATERIALS. YOU AGREE TO USE YOUR INDEPENDENT ANALYSIS, EVALUATION, AND JUDGMENT IN THE EVALUATION OF THE LICENSED MATERIALS. FURTHER, THE LICENSED MATERIALS ARE NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN OR WITH ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT FLIGHT CONTROL, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE MALFUNCTION OR FAILURE OF THE LICENSED MATERIALS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

Confidential Information.

The term “Confidential Information” shall mean the Licensed Materials, whether so marked or not, and any benchmarking results for the Licensed Materials. You agree that You will (i) use the Licensed Materials only in connection with fulfilling Your rights and obligations under this Agreement, and (ii) implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of TI’s Confidential Information and will not disclose such Confidential Information to any third party, except as may be necessary and required in connection with the rights and obligations under this Agreement. Without limiting the foregoing, You agree to hold TI’s Confidential Information in confidence and to use at least the same procedures and degree of care that You use to prevent disclosure of Your own confidential information of like importance, but in no instance less than reasonable degree of care. You agree to obtain executed confidentiality agreements with Your employees, consultants and contractors having access to TI’s Confidential Information and to diligently take steps to enforce such agreements or be responsible for the actions of such employees, consultants and contractors in this respect. Employment agreements used in the normal course of business shall satisfy the requirements of this section. The obligations set forth in this Section (Confidential Information) will survive any expiration or termination of this Agreement for three (3) years after such expiration or termination.

Third Party Intellectual Property.

a. You acknowledge and agree that at least some portions of the Licensed Materials may be based on industry recognized standards published by industry recognized standards bodies and that certain third parties claim to own patents and copyrights that cover implementation of those standards. You acknowledge and agree that this Agreement does not convey any license to any such third party patents, copyrights, and other intellectual property rights and that You are solely responsible for any intellectual property infringement claims that relate to Your use of the Licensed Materials.

The MPEG-4 AAC decoder software includes or incorporates audio algorithms owned or certified by AT&T Corp. (“AT&T”), Coding Technologies AB (“CT”), Dolby Laboratories (“Dolby”), Electronics and Telecommunications Research Institute (“ETRI”), France Télécom, Fraunhofer-Gesellschaft IIS-A (“FhG IIS-A”), Koninklijke Philips Electronics N.V. (“Koninklijke”), Matsushita Electronics Industrial Co., Ltd. (“Matsushita”), NEC Corporation (“NEC”), Nippon Telegraph and Telephone Corporation (“NTT”), Nokia Corporation (“Nokia”), NTT DoCoMo, Inc. (“NTT DoCoMo”), Samsung Electronics Co., Ltd. (“Samsung”), and Sony Corporation (“Sony”). This Agreement does not convey a license nor imply any right under any patent, copyright, trade secret, or other intellectual property right of AT&T, CT, Dolby, ETRI, France Télécom, FhG IIS-A, Koninklijke, Matsushita, NEC, NTT, Nokia, NTT DoCoMo, Samsung, or Sony to use, reproduce, prepare derivative works of, or distribute the MPEG-4 AAC decoder, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the MPEG-4 AAC decoder, or portions or derivatives thereof, for use with any products. A separate license with AT&T, CT, Dolby, ETRI, France Télécom, FhG IIS-A, Koninklijke, Matsushita, NEC, NTT, Nokia, NTT DoCoMo, Samsung and Sony may be required for you to use the MPEG-4 AAC decoder. Via Licensing Corporation is a licensing administrator for the MPEG-4 AAC decoder and can be contacted at: AAC PATENT LICENSING ADMINISTRATOR, Attn: AAC Licensing Coordinator, 100 Potrero Avenue, San Francisco, California 94103 or www.vialicensing.com.

The MPEG-4 video decoder software includes or incorporates algorithms owned by or certified by Canon Inc.; CIF Licensing, LLC; Competitive Technologies, Inc.; France Télécom, société anonyme; Fujitsu Limited; GE Technology Development, Inc.; Hitachi, Ltd.; KDDI Corporation; Koninklijke Philips Electronics N.V.; LG Electronics Inc.; Matsushita Electric Industrial Co., Ltd.; Microsoft Corporation; Mitsubishi Electric Corporation; Oki Electric Industry Co., Ltd.; Pantech&Curitel Communications, Inc.; Robert Bosch GmbH; Samsung Electronics Co., Ltd.; SANYO Electric Co., Ltd.; Sedna Patent Services, LLC; Sharp Kabushiki Kaisha; Siemens AG; Sony Corporation; Telenor ASA; Toshiba Corporation; and Victor Company of Japan, Ltd. (collectively hereinafter “Licensors”). This Agreement does not convey a license nor imply any right under any patent copyright, trade secrets, or other intellectual property right of Licensors to use, reproduce, prepare derivative works of, or distribute the MPEG-4 video decoder software, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the MPEG-4 video decoder software or portions or derivatives thereof, for use with any products. A separate license may be required for you to use the MPEG-4 video decoder software. MPEG LA, LLC is a licensing administrator of the MPEG-4 video decoder software and can be contacted at: 250 Steele Street, Suite 300, Denver, Colorado 80206 or www.mpegla.com.

The MPEG-2 MP@ML decoder includes or incorporates algorithms owned or certified by Alcatel Lucent, Canon, Inc., CIF Licensing, LLC, Columbia University, France Télécom (CNET), Fujitsu, General Instrument Corp., GE Technology Development, Inc., Hitachi, Ltd., KDDI Corporation (KDDI), LG Electronics Inc., Matsushita, Mitsubishi, Nippon Telegraph and Telephone Corporation (NTT), Philips, Robert Bosch GmbH, Samsung, Sanyo Electric Co., Ltd., Scientific-Atlanta, Sharp, Sony, Thomson Licensing, Toshiba, and Victor Company of Japan, Limited (JVC). This Agreement does not convey a license nor imply any right under any patent copyright, trade secrets, or other intellectual property right of Licensors to use, reproduce, prepare derivative works of, or distribute the MPEG-2 decoder software, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the MPEG-2 decoder software or portions or derivatives thereof, for use with any products. A separate license may be required for you to use the MPEG-2 decoder software. MPEG LA, LLC is a licensing administrator of the MPEG-2 decoder software and can be contacted at: 250 Steele Street, Suite 300, Denver, Colorado 80206 or www.mpegla.com.

The H.264/AVC video decoder software includes or incorporates algorithms owned by or certified by Electronics and Telecommunications Research Institute; France Télécom, société anonyme; Fujitsu Limited; Hitachi, Ltd.; Koninklijke Philips Electronics N.V.; LG Electronics Inc.; Matsushita Electric Industrial Co., Ltd.; Microsoft Corporation; Mitsubishi Electric Corporation; Robert Bosch GmbH; Samsung Electronics Co., Ltd.; Sedna Patent Services, LLC; Sharp Kabushiki Kaisha; Siemens AG; Sony Corporation; The Trustees of Columbia University in the City of New York; Toshiba Corporation; Victor Company of Japan, Ltd.; 8x8 Inc.; British Telecommunications plc.; Dolby Laboratories Licensing Corporation; Fraunhofer-Gesellschaft zur Forderung der angewandten Forschung e.V.; and UB Video Incorporated (collectively hereinafter “Licensors”). This Agreement does not convey a license nor imply any right under any patent copyright, trade secrets, or other intellectual property right of Licensors to use, reproduce, prepare derivative works of, or distribute the AVC/H.264 video decoder software, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the AVC/H.264 video decoder software or portions or derivatives thereof, for use with any products. A separate license may be required for you to use the

AVC/H.264 video decoder software. MPEG LA, LLC and Via Licensing Corporation each are a licensing administrator of the AVC/H.264 video decoder software. MPEG LA, LLC can be contacted at: 250 Steele Street, Suite 300, Denver, Colorado 80206 or www.mpegla.com and Via Licensing Corporation can be contacted at: H.264/AVC PATENT LICENSING ADMINISTRATOR, Attn: H.264/AVC Licensing Coordinator, 100 Potrero Avenue, San Francisco, California 94103 or www.vialicensing.com, respectively.

The JPEG encoder software includes or incorporates algorithms that are owned by or claimed to be owned by certain third parties, or covered by patents and copyrights owned by certain third parties that are claimed to cover implementations of this standard. This Agreement does not convey a license nor imply any right under any patent copyright, trade secrets, or other intellectual property right of any third party to use, reproduce, prepare derivative works of, or distribute the JPEG encoder software, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the JPEG encoder software or portions or derivatives thereof, for use with any products. A separate license may be required for you to use the JPEG encoder software. A partial list of third parties may be found at the ITU website (which is subject to change): <http://www.itu.int/ITU-T/dbase/patent/files/itutpsld-db.pdf>.

The G.xxx vocoder software includes or incorporates algorithms that are owned by or claimed to be owned by certain third parties, or covered by patents and copyrights owned by certain third parties that are claimed to cover implementations of this standard. This Agreement does not convey a license nor imply any right under any patent copyright, trade secrets, or other intellectual property right of any third party to use, reproduce, prepare derivative works of, or distribute the G.xxx vocoder software, or portions or derivatives thereof, or to make or have made derivative works, or to offer for sale, sell, or otherwise distribute the G.xxx vocoder software or portions or derivatives thereof, for use with any products. A separate license may be required for you to use the G.xxx vocoder software. A partial list of third parties may be found at the ITU website (which is subject to change): <http://www.itu.int/ITU-T/dbase/patent/files/itutpsld-db.pdf> [See Pages 76-99].

b. The Licensed Materials contain software subject to open source licenses (“Open Source Software”) that are included with the software to which they apply. You acknowledge and agree that You will review and agree with the terms of all such licenses before You use any Licensed Materials. You acknowledge and agree that neither TI nor MontaVista have any duty to support any Open Source Software. YOU ACKNOWLEDGE AND AGREE THAT BOTH TI AND MONTAVISTA DISCLAIM ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES REGARDING ANY OPEN SOURCE SOFTWARE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS AND LACK OF NEGLIGENCE. YOU ACKNOWLEDGE AND AGREE THAT TI AND MONTAVISTA DISCLAIM ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, AND NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO THE LICENSED MATERIALS AND YOUR USE OF THOSE PROGRAMS.

c. You acknowledge and agree that at least some portions of the Licensed Materials are the property of MontaVista, and you agree, with respect to the MontaVista Linux Product (as

defined below) to abide by the following MontaVista License Terms that apply specifically to the MontaVista Linux Product:

MontaVista License Terms

a. Definitions:

Developer means Your employee or contractor who uses the MontaVista Linux Product to develop products for You. In every case, a Developer is an individual. You shall bind all contractors who are Developers to terms and conditions that are consistent with the terms and conditions of this Agreement.

Documentation means the MontaVista user manuals, README files, online help files, and QuickStart Guides and lists of supported features provided to You under this Agreement.

Eclipse Code means the Third Party Complementary software included in the MontaVista development tools of a MontaVista Linux Product designated as “MVL Development/CPL” in the rpm spec file of a MontaVista Linux Product or designated as provided by the Eclipse Foundation” in the license.html or about.html files found in the <eclipse install dir>/features/org.eclipse.* and <eclipse install>/plugins/org.eclipse.* folders, respectively, of the MontaVista development tools.

MontaVista means MontaVista Software, Inc. and its subsidiaries or affiliates.

MontaVista Authored Software means software on which MontaVista claims the copyright to the source code.

MontaVista Linux Product means a PDK for the MontaVista Linux Professional Edition (“PRO”).

MontaVista Proprietary Code means Node-Locked MontaVista Proprietary Code and Non Node-Locked MontaVista Proprietary Code.

MontaVista Zone® means MontaVista’s web portal for providing access to MontaVista Linux Product, Documentation, Updates, Upgrades, certain other materials and information made available by MontaVista to You to the extent you have a valid Subscription.

Node-Locked MontaVista Proprietary Code means software included in the MontaVista development tools designated as “provided by MontaVista” in the about.html or license.html files found in <eclipse install dir>/features/com.mvista.* and <eclipse install dir>/plugins/com.mvista.* folders, respectively, of the MontaVista development tools.

Non Node-Locked MontaVista Proprietary Code means software packages (binary and source, including Shell Script and Python Script and Perl Script which is considered source code) designated as “MontaVista Proprietary”, “MVL Deployment,” or “MVL Development,” in the rpm spec file of a MontaVista Linux Product.

PDK means Platform Developer Kit and refers to a MontaVista Linux Product that includes the target environment (kernel, device drivers and target application packages), as well as a set of libraries and tools necessary to build an application.

Processor Family means the TI DaVinci ARM9 + DSP (based on 64X) architectures.

Subscription means: (i) licenses to the MontaVista Linux Product, Documentation, Updates and Upgrades; and (ii) access to the MontaVista Zone. A Subscription includes access to all released and currently supported versions of the licensed MontaVista Linux Product for the term of the Subscription.

Third Party Complementary Software means software products of third party entities for which MontaVista is a reseller and which may or may not be part of a MontaVista Linux Product.

Update means an enhancement (including, error corrections and bug fixes) made to an existing version of a MontaVista Linux Product as such enhancement is provided by MontaVista, at its discretion. PRO 4.0 to PRO 4.01 would be an example of an Update.

Upgrade means any subsequent version(s) of the MontaVista Linux Product as such subsequent version(s) are provided by MontaVista, at its discretion, to its customers generally. PRO 4.0 to PRO 4.1 or 5.0 would be an example of an Upgrade.

VMWare Player means the proprietary virtualization software developed by VMware, Inc. and included in a MontaVista Linux Product as Third Party Complementary Software.

Workstation means a single computer, node or machine running a particular operating system, firmware or BIOS specifically identified by You.

b. **Subscriptions.**

(1) For MontaVista Linux Products. MontaVista Linux Products are sold by Subscription.

(a) For MontaVista Linux Product Version 4.x or Earlier Version(s). For each MontaVista Linux version 4.x or earlier version provided to You pursuant to this Agreement, Subscriptions are provided:

- per Processor Family;
- per Developer;
- per year.

(b) For MontaVista Linux Product Version 5.x or Later Version(s). For each MontaVista Linux version 5.x or later version provided to You pursuant to this Agreement, Subscriptions are provided:

- per Processor Family;
- per Developer;
- per Workstation (for Node-Locked MontaVista Proprietary Code)

- per year.

c. **License Grant to Documentation.** Subject to the terms and conditions of the Agreement, TI hereby grants You a fully paid-up, royalty free, non-transferable, non-sublicensable, non-exclusive, non-assignable license to use the Documentation in relation to a MontaVista Linux Product, and to copy the Documentation only for use by Your Developers pursuant to this Agreement.

d. **License Grant to Non Node-Locked MontaVista Proprietary Code and VMWare Player.** Subject to the terms of this Agreement, TI grants to each of Your Developers for which You have a valid Subscription, only during the term of such Subscription for the applicable Developer, a fully paid-up, royalty free, non-transferable, non-sublicensable, non-exclusive, non-assignable license to use, in object code only, the Non Node-Locked MontaVista Proprietary Code and VMWare Player solely and exclusively with TI Devices and solely for developing and generating Licensee Derivatives.

e. **License Grant to Node-Locked MontaVista Proprietary Code.** Subject to the terms of this Agreement, TI grants to each of Your Developers for which You have a valid Subscription, only during the term of such Subscription for the applicable Developer, a fully paid-up, royalty free, non-transferable, non-sublicensable, non-exclusive, non-assignable license to use, in object code only, the Node-Locked MontaVista Proprietary Code on one Workstation solely and exclusively with TI Devices and solely for developing and generating Licensee Derivatives. For the avoidance of doubt, the Node-Locked MontaVista Proprietary Code is distributed under the control of a node-locked license and despite any other provision of the Agreement to the contrary, a separate Subscription is required for each Workstation.

f. **License Grant to Eclipse Code.** Subject to the terms of this Agreement, TI grants to each of Your Developers for which You have a valid Subscription, only during the term of such Subscription for the applicable Developer, a fully paid-up, royalty free, non-transferable, non-sublicensable, non-exclusive, non-assignable license to use, in object code only, the Eclipse Code solely and exclusively with TI Devices and solely for developing and generating Licensee Derivatives. The source code for the Eclipse Code is licensed pursuant to the Eclipse Public License Version 1.0 (the “EPL”). A copy of the EPL can be found in the Documentation. With respect to the Eclipse Code, any provisions of this Agreement that differ from the EPL are offered solely by TI and not by any other party.

g. YOU AGREE THAT DESPITE ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, MONTAVISTA SHALL NOT BE LIABLE TO YOU UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY INCLUDING LIABILITY FOR: (I) ANY INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA OR LOST BUSINESS OR PROFITS OR (II) ANY COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR RIGHTS OR (III) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS SET FORTH

IN THIS SECTION SHALL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

h. You agree that (1) MontaVista is a third-party beneficiary to this Agreement; and (2) the terms thereof are made expressly for the benefit of MontaVista and are enforceable by MontaVista in addition to TI.

Intellectual Property Indemnification Disclaimer.

YOU AGREE THAT TI AND MONTAVISTA SHALL NOT BE LIABLE FOR AND SHALL NOT DEFEND OR INDEMNIFY YOU AGAINST ANY THIRD PARTY INFRINGEMENT CLAIM IN THE UNITED STATES OR ELSEWHERE THAT RELATES TO OR IS BASED ON YOUR USE OF THE LICENSED MATERIALS IN ANY MANNER. THE FOREGOING STATES TI'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT UNDER THIS AGREEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO.

Term and Termination.

Term. The term of this Agreement shall begin on the date you accept this Agreement's terms and conditions, and shall continue indefinitely until otherwise terminated. You may terminate this Agreement at any time by written notice to TI. Without prejudice to any other rights, if You fail to comply with the terms of this Agreement, TI may terminate Your right to use the Licensed Materials.

TI may terminate this Agreement on thirty (30) days written notice to You, at any time, for convenience. Upon termination of this Agreement, You will destroy any and all copies of the Licensed Materials in Your possession, custody or control, and provide TI a written statement signed by You, or Your company's authorized representative, certifying such destruction.

Liability Limitations.

IN NO EVENT SHALL TI, OR ANY APPLICABLE LICENSOR, BE LIABLE FOR ANY SPECIAL, INDIRECT, COLLATERAL, INCIDENTAL, PUNATIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, IN CONNECTION WITH OR ARISING OUT OF THE LICENSES GRANTED HEREIN, THIS AGREEMENT OR USE OF THE LICENSED MATERIALS, REGARDLESS OF WHETHER OR NOT TI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF DATA, OR LOSS OF USE OR INTERRUPTION OF BUSINESS.

IN NO EVENT SHALL TI'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED FIVE HUNDRED DOLLARS (\$500) OR THE AMOUNT YOU PAID FOR THE LICENSED MATERIALS, WHICHEVER IS GREATER. The existence of more than one claim will not enlarge or extend these limits.

Governing Law, Jurisdiction and Severability. This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, U.S.A., without reference to that state's conflict-of-laws principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, nor shall it be governed by the Uniform Computer Information Transactions Act. Any dispute arising out of or related to this Agreement will be brought in, and each party consents to non-exclusive jurisdiction and venue in, the state and federal courts sitting in Dallas County, Texas, U.S.A. Each party waives all defenses of lack of personal jurisdiction and forum non-conveniens and agrees that process may be served on either party in a manner authorized by applicable law or court rule. If for any reason a court of competent jurisdiction finds any provision of the Agreement to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties and the remainder of the Agreement shall continue in full force and effect.

Export Control. You hereby acknowledge and agree that unless prior authorization is obtained from the United States Department of Commerce, neither You nor your agents will export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from TI or MontaVista, or export, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR. You agree that none of the Licensed Materials may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria or any other country for which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Denied Person List or Entity List. You represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list and you will not use or transfer the Licensed Materials for use in any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the U.S. Government by regulation or specific license. The assurances provided for herein are furnished to TI by You in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

High Risk Activities. The Licensed Materials are not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, air traffic control, or direct life support machines, in which the failure of the Licensed Materials could lead directly to death, personal injury, or severe physical or environmental damage.

Entire Agreement. This is the entire Agreement between You and TI and supersedes any prior and contemporaneous agreements, understandings, negotiations and discussions between the parties related to the subject matter of this Agreement. Neither party shall be bound by any conditions, definitions, warranties, understandings, nor representations with respect to the subject matter hereof other than as expressly provided herein. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear in any purchase order, acknowledgement or other writing not expressly incorporated into this Agreement. No amendment or modification of this Agreement will be effective unless in writing and signed by a duly authorized representative of TI. You hereby warrant and represent

that You have obtained all authorizations and other applicable consents required empowering you to enter into this Agreement and use the Licensed Materials.