WinCE 6.0 AM1x/OMAPL13x Board Support Package Demo Software License Agreement

IMPORTANT – PLEASE READ THE FOLLOWING LICENSE AGREEMENT CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT. 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.

Important – Read carefully: This software license agreement ("Agreement") is a legal agreement between you (either an individual or entity) and Texas Instruments Incorporated ("TI"). The "Licensed Materials" subject to this Agreement include the software programs (in whole or in part) that accompany this Agreement and that TI has granted you access to download and any "on-line" or electronic documentation (in whole or in part) associated with these programs, as well as any updates or upgrades to such software programs and documentation, if any, provided to you at TI's sole discretion. Additionally, the Licensed Materials may contain software programs that are subject to additional third party license agreements as indicated in the files contained with such software programs. In the event such a third party license agreement is applicable, then you agree to be bound by both this Agreement and the third party license agreement, with the third party license agreement controlling to the extent that it is more restrictive than this agreement.

The Licensed Materials are specifically designed and licensed for use solely and exclusively with processing devices manufactured by or for TI ("TI Devices"). 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 choose not to accept or agree with these provisions, do not download or install the Licensed Materials.

Note Regarding Possible Access to Open Source Software: The Licensed Materials may be bundled with Open Source Software. "Open Source Software" means any software licensed under terms requiring that (A) other software ("Proprietary Software") incorporated, combined or distributed with such software or developed using such software: (i) be disclosed or distributed in source code form; or (ii) otherwise be licensed on terms inconsistent with the terms of this Agreement, including but not limited to permitting use of the Proprietary Software on or with devices other than TI Devices, or (B) the owner of Proprietary Software license any of its patents to users of the Open Source Software and/or Proprietary Software incorporated, combined or distributed with such Open Source Software or developed using such Open Source Software.

By accepting this Agreement, you may gain access to Open Source Software, in which case such Open Source Software will be listed in the applicable software manifest (in whole or in part, the "Open Source Materials"). Your use of the Open Source Materials is subject to the separate licensing terms applicable to such Open Source Materials as specified in the applicable software manifest. For clarification, this Agreement does not limit your rights under, or grant you rights that supersede, the license terms of any applicable Open Source Materials license agreement. If any of the Open Source Materials have been provided to you in object code only, TI will provide to you or show you where you can access the source code versions of such Open Source Materials if you contact TI at Texas Instruments Incorporated, 12500 TI Boulevard, Mail Station 8638, Dallas, Texas 75243, Attention: Contracts Manager. You may terminate this Agreement in the event you choose not to accept or agree with the terms in any applicable Open Source Materials license agreement, provided that such termination occurs within five (5) days of acceptance of this Agreement and you abide by all applicable license terms in this Agreement until such termination.

1. License Grant and Use Restrictions.

- a. Licensed Materials Evaluation, Testing and Demonstration License Grant. Subject to the terms of this Agreement and the additional restrictions set forth in Section 3(c), TI hereby grants to you a non-transferable, non-exclusive, non-assignable, non-sublicensable license under all TI intellectual property rights embodied in the Licensed Materials only (i) to use the Licensed Materials for internal testing and evaluation purposes and solely on TI Devices, and (ii) to demonstrate to third parties the Licensed Materials, as they are used or intended to be used in a product that includes a TI Device and consists of both hardware and software components, including executable only versions of the Licensed Materials, provided that the Licensed Materials are demonstrated in object or executable versions only and the Licensed Materials are not left with or retained by such third parties. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS AGREEMENT DOES NOT CONVEY ANY LICENSE TO USE THE LICENSED MATERIALS FOR THE DEVELOPMENT OF DERIVATIVES THEREOF OR IN PRODUCTION, OR TO DISTRIBUTE THE LICENSED MATERIALS, OR ANY DERIVATIVE THEREOF, TO ANY THIRD PARTY. YOU ARE REQUIRED TO EXECUTE A SEPARATE LICENSE AGREEMENT WITH TI AND TI'S LICENSORS, AS APPLICABLE, BEFORE MANUFACTURING OR DISTRIBUTING THE LICENSED MATERIALS. OR ANY DERIVATIVES THEREOF, OR ANY PRODUCTS THAT CONTAIN THE LICENSED MATERIALS, OR ANY DERIVATIVES THEREOF.
- b. <u>Contractors and Suppliers</u>. The licenses granted to you hereunder shall include your on-site and off-site suppliers and independent contractors, while such suppliers and independent contractors are performing work for or providing services to you, provided that such suppliers and independent contractors have executed work-for-hire agreements with you containing terms and conditions not inconsistent with the terms and conditions set forth in this Agreement, and provided that you shall be liable to TI for any breach by your suppliers or independent contractors of this Agreement to the same extent as you would be if you had breached the Agreement yourself.
- c. <u>No Other License</u>. Notwithstanding anything to the contrary, nothing in this Agreement shall be construed as a license to any intellectual property rights of TI other than those rights embodied in the Licensed Materials provided to you by TI. EXCEPT AS PROVIDED HEREIN, NO OTHER LICENSE, EXPRESS OR IMPLIED, BY ESTOPPEL OR OTHERWISE, TO ANY OTHER TI INTELLECTUAL PROPERTY RIGHTS IS GRANTED HEREIN.
- d. Restrictions. You shall not use the Licensed Materials with a processing device manufactured by or for an entity other than TI, and you agree that any such unauthorized use of the Licensed Materials is a material breach of this Agreement. Except as otherwise provided in this Agreement, you will not sublicense, transfer, or assign the Licensed Materials or your rights under this Agreement to any third party or loan, rent or lease the Licensed Materials to any third party. You may use the Licensed Materials with Open Source Software or with software developed using Open Source Software tools provided you do not incorporate, combine or distribute the Licensed Materials in a manner that subjects the Licensed Materials, or any derivatives thereof, to any license obligations or any other intellectual property related terms of any license governing such Open Source Software.
- e. <u>Termination</u>. This Agreement is effective until 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 and any applications generated using the Licensed Materials upon written notice to you. Upon termination of this Agreement, you will destroy any and all copies of the Licensed Materials in your possession, custody or control and provide to TI a written statement signed by your authorized representative certifying such destruction. Except for Sections 1(a), 1(b), and 1(c), all Sections of this Agreement will survive any expiration or termination of the Agreement.

2. Licensed Materials Ownership. The Licensed Materials are licensed, not sold to you, and can only be used in accordance with the terms of this Agreement. Subject to the licenses granted to you pursuant to this Agreement, TI and TI's licensors own and shall continue to own all right, title and interest in and to the Licensed Materials, including all copies thereof. The parties 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 such fixes, modifications or improvements to the Licensed Materials will vest solely in TI. Moreover, you acknowledge and agree that when your independently developed software or hardware components are combined, in whole or in part, with the Licensed Materials, your right to use the Licensed Materials embodied in such resulting combined work shall remain subject to the terms and conditions of this Agreement.

3. Intellectual Property Rights.

- a. 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. To protect TI's and its licensors' rights in the Licensed Materials, you agree, except as specifically permitted by statute by a provision that cannot be waived by contract, not to "unlock", decompile, reverse engineer, disassemble or otherwise translate to a human-perceivable form any portions of the Licensed Materials provided to you in object code format only, nor permit any person or entity to do so. You shall not remove, erase, alter, tamper, cover or obscure any confidentiality, trade secret, proprietary or copyright notices, trade-marks, proprietary, patent or other identifying marks or designs printed or stamped on, affixed to or encoded or recorded in any component of the Licensed Materials and you shall reproduce and include in all copies of the Licensed Materials the copyright notice(s) and proprietary legend(s) of TI and its licensors as they appear in the Licensed Materials. TI reserves all rights not specifically granted under this Agreement.
- b. Certain Licensed Materials may be based on industry recognized standards or software programs published by industry recognized standards bodies and certain third parties may claim to own patents, copyrights and other intellectual property rights that cover implementation of those standards. You acknowledge and agree that this Agreement does not convey a license to any such third party patents, copyrights and other intellectual property rights and that you are solely responsible for any patent, copyright or other intellectual property right claim that relates to your use or distribution of the Licensed Materials, or your use or distribution of your products that include or incorporate the Licensed Materials. Moreover, you acknowledge that any fees or royalties paid to TI pursuant to this Agreement, as applicable, do not include any fees or royalties that may be payable to any third party based on such third party's interests in the Licensed Materials or any intellectual property rights that cover implementation of any industry recognized standard, any software program published by any industry recognized standards bodies or any other proprietary technology. You acknowledge that you are responsible for any such fees or royalties that may be payable to any third party based on such third party's interests in the Licensed Materials or any intellectual property rights that cover implementation of any industry recognized standard, any software program published by any industry recognized standards bodies or any other proprietary technology.
- c. *Microsoft Corporation Software*. The Licensed Materials contain software owned by Microsoft Corporation. The additional terms and conditions set forth in Exhibit 1, which is attached hereto and incorporated herein by this reference, shall apply to your use of such portion of the Licensed Materials owned by Microsoft Corporation. In the event of a conflict between this Agreement and Exhibit 1, the terms of Exhibit 1 shall control with respect to the Microsoft owned portions of the Licensed Materials.

Microsoft Windows CE Operating System. This Agreement does not grant a license to use the Windows CE operating system. Except as provided by other licenses included with portions of the Licensed Materials, you must obtain a license for the Windows CE operating system directly from Microsoft Corporation or one of its authorized resellers. Such license is required before you can use the Licensed Materials. This Agreement does not convey a license or imply any right under any patent, copyright, trade secret or other intellectual property right of Microsoft Corporation.

- 4. Audit Right. At TI's request, and within thirty (30) days after receiving written notice, you shall permit an independent auditor selected by TI to have access, no more than twice each calendar year (unless the immediately preceding audit revealed a discrepancy) and during your regular business hours, to all of your equipment, records and documents as may contain information bearing upon the use of the Licensed Materials. You shall keep full, complete, clear and accurate records with respect to your use of the Licensed Materials for a period beginning with the thencurrent calendar year and going back three (3) years.
- 5. Confidential Information. You acknowledge and agree that the Licensed Materials contain trade secrets and other confidential information of TI and its licensors. You agree to use the same degree of care, but no less than a reasonable degree of care, as you use to protect your own similar confidential information of like importance, and to prevent: i) any use not authorized herein; ii) dissemination to any employee without a need to have access to and use the Licensed Materials to further the purpose described herein; and iii) except as provided in (ii), communication to any third party or publication of the Licensed Materials. You agree to be fully responsible to TI for damages resulting from any of your employees' non-compliance with such terms. The use of, and access to, Licensed Materials and/or any other information provided to you pursuant to this Agreement (hereinafter referred to collectively as "Proprietary Information") will be strictly limited to those of your employees with a need to know and such employees shall have written agreements with you with terms which bind such employee to obligations of use sufficient to satisfy your like obligations under this Agreement. You agree that you will not use except as specifically permitted by this Agreement, any Licensed Materials or other Proprietary Information. TI may disclose your contact information to TI's applicable licensors.
- 6. Warranties and Limitations. YOU ACKNOWLEDGE AND AGREE THAT SOME OR ALL OF THE LICENSED MATERIALS MAY BE PRE-RELEASE VERSIONS FOR BETA USE AND MAY NOT BE INTENDED FOR PRODUCTION APPLICATIONS AND MAY CONTAIN IRREGULARITIES AND DEFECTS NOT FOUND IN PRODUCTION SOFTWARE. FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT THE LICENSED MATERIALS FOR BETA USE HAVE NOT BEEN TESTED OR CERTIFIED BY ANY GOVERNMENT AGENCY OR INDUSTRY REGULATORY ORGANIZATION OR ANY OTHER THIRD PARTY ORGANIZATION.

THE LICENSED MATERIALS ARE PROVIDED "AS IS". TI AND ITS LICENSORS MAKE NO WARRANTY OR REPRESENTATION, EITHER 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. 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.

IN NO EVENT SHALL TI, OR ANY APPLICABLE LICENSOR, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF THE LICENSED MATERIALS, REGARDLESS OF WHETHER TI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE. BUT

ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS OR LOSS OF USE OR INTERRUPTION OF BUSINESS. IN NO EVENT WILL TI'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ARISING OUT OF YOUR USE OF THE LICENSED MATERIALS EXCEED THE GREATER OF FIVE HUNDRED U.S. DOLLARS (US\$500) OR THE FEES PAID TO TI BY YOU FOR THE LICENSED MATERIALS UNDER THIS AGREEMENT.

Because some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or limitation on how long an implied warranty lasts, the above limitations or exclusions may not apply to you.

- 7. Indemnification Disclaimer. YOU ACKNOWLEDGE AND AGREE THAT TI AND ITS LICENSORS SHALL NOT BE LIABLE FOR AND SHALL NOT DEFEND OR INDEMNIFY YOU AGAINST ANY THIRD PARTY INFRINGEMENT CLAIM THAT RELATES TO OR IS BASED ON YOUR USE OF THE LICENSED MATERIALS.
- 8. No Technical Support. TI and TI's licensors are under no obligation to install, maintain or support the Licensed Materials.
- 9. Notices. All notices to TI hereunder shall be delivered to Texas Instruments Incorporated, 12500 TI Boulevard, Mail Station 8638, Dallas, Texas 75243, Attention: Contracts Manager, with a copy to Texas Instruments Incorporated, 12500 TI Boulevard, Mail Station 8658, Dallas, Texas 75243, Attention: General Counsel. All notices shall be deemed served when received by TI.
- 10. Export Control. You hereby acknowledge that the Licensed Materials are subject to export control under the U.S. Commerce Department's Export Administration Regulations ("EAR"). You further hereby acknowledge and agree that unless prior authorization is obtained from the U.S. Commerce Department, neither you nor your customers will export, re-export or release, directly or indirectly, any technology, software or software source code (as defined in Part 772 of the EAR), received from TI, 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 or 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 reexported (i) into (or to a national or resident of) Cuba, Iran, North Korea, Sudan and Syria or any other country 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 Persons 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 or for a military end-use in, or by any military entity of, Albania, Armenia, Azerbaijan, Belarus, Cambodia, China, Georgia, Iraq, Kazakhstan, Kyrqyzstan, Laos, Libya, Macau, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. Any software export classification made by TI shall be for TI's internal use only and shall not be construed as a representation or warranty regarding the proper export classification for such software or whether an export license or other documentation is required for the exportation of such software.
- 11. Governing Law and Severability; Waiver. This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict of laws principles. 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. This Agreement shall not be governed by the United Nations Convention on Contracts for the

International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). The parties agree that non-exclusive jurisdiction for any dispute arising out of or relating to this Agreement lies within the courts located in the State of Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and either party may seek injunctive relief in any United States or foreign court. Failure by TI to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision in this Agreement or any other agreement that may be in place between the parties.

- **12. PRC Provisions.** If you are located in the People's Republic of China ("PRC") or if the Licensed Materials will be sent to the PRC, the following provisions shall apply and shall supersede any other provisions in this Agreement concerning the same subject matter:
 - a. <u>Registration Requirements</u>. You shall be solely responsible for performing all acts and obtaining all approvals that may be required in connection with this Agreement by the government of the PRC, including but not limited to registering pursuant to, and otherwise complying with, the PRC Measures on the Administration of Software Products, Management Regulations on Technology Import-Export, and Technology Import and Export Contract Registration Management Rules. Upon receipt of such approvals from the government authorities, you shall forward evidence of all such approvals to TI for its records. In the event that you fail to obtain any such approval or registration, you shall be solely responsible for any and all losses, damages or costs resulting therefrom, and shall indemnify TI for all such losses, damages or costs.
 - b. <u>Governing Language</u>. This Agreement is written and executed in the English language. If a translation of this Agreement is required for any purpose, including but not limited to registration of the Agreement pursuant to any governmental laws, regulations or rules, you shall be solely responsible for creating such translation. Any translation of this Agreement into a language other than English is intended solely in order to comply with such laws or for reference purposes, and the English language version shall be authoritative and controlling.
- 13. Entire Agreement. This is the entire Agreement between you and TI and this Agreement supersedes any prior agreement between the parties related to the subject matter of this Agreement. Notwithstanding the foregoing, any signed and effective software license agreement relating to the subject matter hereof and stating expressly that such agreement shall control regardless of any subsequent click-wrap, shrink-wrap or web-wrap, shall supersede the terms of 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.

Exhibit 1 Additional Terms

These additional license terms apply to the portion of the Licensed Materials owned by Microsoft.

If you use the software, you accept these additional terms. If you do not accept the additional terms, do not use the software. If you comply with these terms, you have the rights below.

- 1. You may install and use the software on each of your computing devices. Your license rights to the software are only for use on a Windows Embedded CE 6.0 based device or other devices running on Microsoft products based on the Windows Embedded CE kernel.
- 2. Additional Terms Applicable to Software.
 - 2.1 The software is not fault-tolerant and is not designed, manufactured or intended for any use requiring fail-safe performance in which the failure of the software could lead to death, serious personal injury or severe physical and environmental damage ("High Risk Activities"), such as the operation of aircraft or nuclear facilities. You agree not to use, or license the use of, the software in connection with any High Risk Activities.
 - 2.2 If you assert any claims against TI or Microsoft over patents that you think may apply to the software (including a cross-claim or counterclaim in a lawsuit), your license to the software ends automatically.
 - 2.3 The patent rights, if any, granted in this License apply only to the software and not to any derivatives you make.
 - 2.4 Your rights under this License end automatically if you breach this License in any way.
 - 2.5 This License shall be construed and controlled by the laws of the State of Washington, USA, without regard to conflicts of law. If any provision of this License shall be deemed unenforceable or contrary to law, the rest of this License shall remain in full effect and interpreted in an enforceable manner that most nearly captures the intent of the original language.
 - 2.6 You can recover from TI and its suppliers (including Microsoft) only direct damages up to U.S.\$5.00. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages. This limitation applies to:
 - anything related to the software, services, content (including code) on third party internet sites, or third party programs, and
 - claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.
 - It also applies even if repair, replacement or a refund for the software does not fully compensate you for any losses; or
 - TI or Microsoft knew or should have known about the possibility of the damages.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. They also may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.