

# LICENSE

WhirlWind 1.0  
Futures Software License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY. BY USING THE SOFTWARE (INCLUDING ITS COMPONENTS), YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT DOWNLOAD OR USE THE SOFTWARE AND, IF APPLICABLE, RETURN THE ENTIRE UNUSED PACKAGE TO THE RESELLER WITH YOUR RECEIPT FOR A REFUND. THE SOFTWARE MAY NOT BE SOLD, TRANSFERRED, OR FURTHER DISTRIBUTED WITHOUT PRIOR WRITTEN AUTHORIZATION FROM FUTURES.

## RIGHTS AND LICENSES

This Futures Software License Agreement ("Agreement") is a legal agreement between You (an entity or a person) and Futures, Inc. ("Futures") with respect to the software product identified in the title of this Agreement, media (if any) and accompanying documentation (collectively the "Software").

The Software is a collective work of Futures. You must acquire a license for each installation of the Software and for each additional copy (or partial copy) of the Software stored or loaded in memory or virtual memory beyond the initial copy necessary for execution of the Software installed on the hardware.

The Software is a modular operating system. Most of the components are open source packages, developed independently, and accompanied by separate license terms. Your license rights with respect to individual components accompanied by separate license terms are defined by those terms; nothing in this Agreement shall restrict, limit, or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under such license terms.

While the license terms for a component may authorize You to distribute the component, You may not use any Futures marks (e.g., WhirlWind) in distributing the component, whether or not the component contains Futures marks.

## OTHER LICENSE TERMS AND RESTRICTIONS

The Software is protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. The Software is licensed to You, not sold.

The Software may be bundled with other software programs ("Bundled Programs"). Your license rights with respect to Bundled Programs accompanied by separate license terms are defined by those terms; nothing in this Agreement shall restrict, limit, or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under such license terms.

Futures reserves all rights not expressly granted to You. You may not: (1) reverse engineer, decompile, or disassemble the Software except and only to the extent it is expressly permitted by applicable law or the license terms accompanying a component of the Software; or (2) transfer the Software or Your license rights under this Agreement, in whole or in part.

## MAINTENANCE AND SUPPORT

Your rights with respect to updates, patches, or other materials received under a subscription to a Futures maintenance program for the Software are defined by the relevant maintenance program terms.

Futures has no obligation under this Agreement to provide maintenance or support for the Software. Depending on how You acquired the Software, You may have also acquired a maintenance subscription for

the Software. For more information on Futures' current maintenance and support offerings, see <http://www.futures-inc.com/>.

#### OWNERSHIP RIGHTS

No title to or ownership of the Software is transferred to You. Futures and/or its licensors owns and retains all title and ownership of all intellectual property rights in the Software, including any adaptations or copies. You acquire only a license to use the Software.

#### LIMITED WARRANTY

For ninety (90) days from Your date of purchase, Futures warrants that (1) any media on which the Software is delivered is free from physical defects; and (2) the Software will substantially conform to the documentation accompanying the Software. If the defective items are returned to Futures or if You report the nonconformity to Futures within ninety (90) days from the date of purchase, Futures will at its sole discretion either resolve the nonconformity or refund the license fees You paid for the Software. Any misuse or unauthorized modification of the Software voids this warranty. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. (The foregoing warranty does not apply to Software provided free of charge. SUCH SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.)

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

THE SOFTWARE IS ONLY COMPATIBLE WITH CERTAIN COMPUTERS AND OPERATING SYSTEMS. THE SOFTWARE IS NOT WARRANTED FOR NON-COMPATIBLE SYSTEMS. Call Futures for information about compatibility.

Non-Futures Products. The Software may include or be bundled with hardware or other software programs licensed or sold by a licensor other than Futures. FUTURES DOES NOT WARRANT NON-FUTURES PRODUCTS. ANY SUCH PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS. ANY WARRANTY SERVICE FOR NON-FUTURES PRODUCTS IS PROVIDED BY THE PRODUCT LICENSOR IN ACCORDANCE WITH THE APPLICABLE LICENSOR WARRANTY.

EXCEPT AS OTHERWISE RESTRICTED BY LAW, FUTURES DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. FUTURES MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. FUTURES DOES NOT WARRANT THAT THE SOFTWARE WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. Some jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to You. This limited warranty gives You specific rights and You may also have other rights which vary from state to state.

#### LIMITATION OF LIABILITY

(a) Consequential Losses. NEITHER FUTURES NOR ANY OF ITS LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

(b) Direct Damages. IN NO EVENT WILL FUTURES' AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OUT OF WHICH SUCH CLAIM AROSE [OR \$50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE]. The above exclusions and limitations will not apply to claims relating to death or personal injury. In those jurisdictions that do not allow the exclusion or limitation of

damages, Futures' liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

## GENERAL TERMS

**Term.** This Agreement becomes effective on the date You legally acquire the Software and will automatically terminate if You breach any of its terms. Upon termination of this Agreement, You must destroy the original and all copies of the Software or return them to Futures and delete the Software from Your systems.

**Benchmark Testing.** This benchmark testing restriction applies to You if You are a software vendor or if You are performing testing on the Software at the direction of or on behalf of a software vendor. You may not, without Futures' prior written consent not to be unreasonably withheld, publish or disclose to any third party the results of any benchmark test of the Software. If You are a vendor of products that are functionally similar to or compete with the Software ("Similar Products"), or are acting on behalf of such a vendor, and You publish or disclose benchmark information on the Software in violation of this restriction, then notwithstanding anything to the contrary in the Similar Product's end user license agreement, and in addition to any other remedies Futures may have, Futures shall have the right to perform benchmark testing on Similar Products and to disclose and publish that benchmark information and You hereby represent that You have authority to grant such right to Futures.

**Transfer.** This Agreement may not be transferred or assigned without the prior written approval of Futures.

**Law and Jurisdiction.** This Agreement is governed by the laws of the State of Maryland, U.S. Any action at law relating to this Agreement may only be brought before the courts of competent jurisdiction of the State of Maryland. If, however, Your country of principal residence is a member state of the European Union or the European Free Trade Association, this Agreement is governed by the laws of that country, and any action at law may only be brought before a court of competent jurisdiction of that country.

**Entire Agreement.** This Agreement and the Upgrade/Additive Agreement (if applicable) sets forth the entire understanding and agreement between You and Futures and may be amended only in a writing signed by both parties. NO LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

**Waiver.** No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

**Severability.** If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

**Export Compliance.** Any person or entity exporting or re-exporting Futures products directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U.S. Export Administration Regulations and the laws of host countries. Futures assumes no responsibility or liability for your failure to obtain any necessary export approvals. Approvals are dependent upon an item's technical characteristics, the destination, end-use and end-user, as well as other activities of the end user. Specifically, no Futures product may be exported to embargoed or otherwise restricted countries or end users. Please consult the Bureau of Industry and Security web page and other sources before exporting Futures products from the U.S. and familiarize yourself with the laws of destination countries before re-exporting Futures products. This provision shall survive the expiration or earlier termination of this

Agreement.

U.S. Government Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to the restrictions in FAR 52.227-14 (June 1987) Alternate III (June 1987), FAR 52.227-19 (June 1987), or DFARS 252.227-7013 (b) (3) (Nov 1995), or applicable successor clauses. Contractor/Manufacturer is Futures, Inc., 1225 Crows Foot Road, Marriottsville, Maryland 21104.

Other. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

Copyright 2007 Futures, Inc. All Rights Reserved.

Linux is a registered trademark of Linus Torvalds.