

**END-USER LICENSE AGREEMENT FOR  
OVERDRIVE SOFTWARE AND HARDWARE**  
rev 9

**IMPORTANT- READ CAREFULLY BEFORE USING SYSTEM**

This End-User License Agreement (EULA) is a legal agreement between you and, if applicable, your company ("End-User" or "Licensee"), and Concept Overdrive Inc. ("Licensor"). The Licensor is the manufacturer of the software and hardware product ("CONTROL SYSTEM PRODUCT") . The CONTROL SYSTEM PRODUCT, as that term is used in this EULA, includes all Overdrive computer software modules running in Linux, RTLinux, RTCore, Xenomai, DOS and other environments, and all custom electronic circuits integrated into the control system. By purchasing and installing, or otherwise using the CONTROL SYSTEM PRODUCT, the End-User agrees to be bound by the terms of this EULA and the End-User represents that he or she is authorized to accept the conditions of this EULA individually and, if the CONTROL SYSTEM PRODUCT is to be used by the End-User's company, on behalf of the End-User's company.

**LICENSE AGREEMENT**

**1. Parties**

The parties to this EULA are the End-User and the Licensor.

**2. Grant of License and Permitted Uses**

a. Grant of License. Subject to the terms and conditions of this EULA and any applicable terms and conditions of the purchase order or other agreement between the End-User and Licensor that define the terms of the purchase and permitted use of the CONTROL SYSTEM PRODUCT, which terms and conditions are incorporated herein by reference, Licensor grants Licensee a limited, non-exclusive, license to install, operate and use one copy of the CONTROL SYSTEM PRODUCT. The Licensee to which this license is extended is the individual legal entity which accepts this Agreement.

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**3. Intellectual Property Restrictions and Other Limitations**

a. Transfer. Licensee may sell the CONTROL SYSTEM PRODUCT to a third party provided that new Licensee obtains from Licensor a Transfer License, which will be offered for a reasonable fee, typically ¼ of the cost of a control system kit. The new licensee must agree to the terms of this EULA, and a new EULA will be issued in the name of the new Licensee. The original Licensee must dispose of any back-up copy of the CONTROL SYSTEM PRODUCT Software at the time of sale.

b. Restrictions on Transfer. Licensee agrees not to lease, rent, lend, or otherwise time-share the CONTROL SYSTEM PRODUCT, in whole or in part, to any third party without granting Licensor right of first refusal to supply CONTROL SYSTEM PRODUCT to the third party. If Licensor opts not to supply a CONTROL SYSTEM PRODUCT, then Licensee will profit-share the rental at a rate of not less than 1/3 of gross rental receipts to Licensor.

c. Intellectual Property Notices and Marking. Licensee may not obscure, remove or alter any of the trademarks, trade names, logos, patent or copyright notices or markings applied to or on the CONTROL SYSTEM PRODUCT.

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#### **4. Support for CONTROL SYSTEM PRODUCT**

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#### **5. Ownership of CONTROL SYSTEM PRODUCT**

a. Ownership. Licensor has and shall have sole and exclusive ownership of all right, title, and interest in and to the CONTROL SYSTEM PRODUCT Software and all portions and copies thereof. In addition, Licensor shall have sole and exclusive ownership of any additional programs, updates, modifications, upgrades, and revisions provided to Licensee for the CONTROL SYSTEM PRODUCT Software. No title is transferred by this EULA or by the payment of any fee. If title to the CONTROL SYSTEM PRODUCT Software or any part or element thereof does not, by operation of law, vest in Licensor, Licensee hereby assigns to Licensor, or its designee all right, title and interest in and to the CONTROL SYSTEM PRODUCT Software.

#### **6. Term and Termination**

a. Term. This EULA commences upon the date the End-User accepts the terms and conditions of this Agreement, provided that the terms and conditions of the purchase order or other agreement between the Licensee and Licensor defining the purchase and permitted use of the CONTROL SYSTEM PRODUCT have been satisfied, and shall continue in perpetuity or until termination of this EULA by either party.

b. Termination. The Licensee may terminate this EULA at any time by returning to

Licensor or destroying the CONTROL SYSTEM PRODUCT Software and all copies thereof and deleting or uninstalling the CONTROL SYSTEM PRODUCT Software and all copies thereof, and certifying the same in writing to Licensor within ten business days of termination. Licensor may terminate this EULA at any time, by providing written notice to the Licensee, if the provisions of the EULA are intentionally breached by Licensee, or inadvertently breached and not corrected within 30 days of written notice.

**7. Disclaimers and Remedies.**

a. Disclaimer of Warranty. THE CONTROL SYSTEM PRODUCT AND ALL PORTIONS THEREOF, AND ANY SERVICES ARE PROVIDED "AS IS". TO THE MAXIMUM EXTENT PERMITTED BY LAW, LICENSOR DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE CONTROL SYSTEM PRODUCT WILL MEET ANY REQUIREMENTS OR NEEDS LICENSEE MAY HAVE, OR THAT THE CONTROL SYSTEM PRODUCT WILL OPERATE ERROR FREE, OR IN AN UNINTERRUPTED FASHION, OR THAT ANY DEFECTS OR ERRORS IN THE CONTROL SYSTEM PRODUCT WILL BE CORRECTED.

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**8. Indemnification.**

a. Licensor. If Licensee receives a claim that the use of the CONTROL SYSTEM PRODUCT infringes a patent, copyright, or other intellectual property right, Licensee must promptly

notify Licensor in writing. Licensor shall, at its own expense and option: (i) defend and settle such claim, (ii) procure Licensee the right to use the CONTROL SYSTEM PRODUCT, (iii) modify or replace the CONTROL SYSTEM PRODUCT to avoid infringement; or (iv) provide a pro rata refund of license fees paid for the applicable time period.

b. Licensee. Licensee agrees to indemnify, defend, and hold harmless Licensor and its employees or agents from and against any and all third-party liabilities, claims, demands losses, damages, costs and expenses (including reasonable attorney's fees) which may be assessed against or incurred by Licensee relating to or arising out of: (i) any material breach of this EULA by Licensee; or (ii) any negligent, or intentional misconduct or omission of Licensee or its employees or agents in connection with its use of the CONTROL SYSTEM PRODUCT.

c. Exceptions. Licensor shall have no liability to Licensee under section 8(a) or otherwise for any claim or action alleging infringement based upon (i) any use of the CONTROL SYSTEM PRODUCT in a manner other than as specified by Licensor; (ii) any combination of the CONTROL SYSTEM PRODUCT by Licensee with other products, equipment, devices, software, systems, or data not supplied by Licensor to the extent such claim is directed against such combination; (iii) any unauthorized modifications, enhancements or customization of the CONTROL SYSTEM PRODUCT by any person other than Licensor.

## **9. "Hot Spare" Licenses**

a. If this license is a "Hot Spare" license:

A Hot Spare license is a limited license to CONTROL SYSTEM PRODUCT software intended for use by Licensee as a rental, in the event of the failure of a fully licensed computer, or in case of other urgent need. A Hot Spare license is granted for use over a limited time period predetermined by Licensor. This limited license can be refreshed and re-used per the following terms:

b. In the event of the failure of a fully licensed computer:

If a Hot Spare timeout ends and an urgent need persists, the license period can be extended for another contiguous time period without charge, at the discretion of Licensor.

c. If a Hot Spare is used as a replacement for a defunct fully licensed computer, Licensee will supply the defunct computer or its disk storage to Licensor for inspection within 60 days. In the case of loss of the fully licensed computer, Licensee will provide proof of loss in one or more of the following forms: an explanation on company letterhead, an insurance report, police report, or production report. Licensor will refresh the Hot Spare license for future use at no charge if proof of fully licensed computers failure or loss is confirmed. If such confirmation is not provided to Licensor within 60 days of the malfunction, Licensor may assess an additional fee for refreshing the Hot Spare license, the cost of which is described below.

d. If a Hot Spare license is used, but not as a replacement for a malfunctioning computer, Licensor will assess a fee for refreshing the Hot Spare license, the cost of which is described below.

e. The amount of any extra fee assessed to refresh a Hot Spare license will be calculated from the current published Rental cost of a CONTROL SYSTEM PRODUCT.

Any attempt to circumvent the limitations above is considered a breach which will terminate

this End User License Agreement.

#### **10. “Playback Only” Licenses**

a. If this license is a “Playback Only” license:

A Playback Only license is a limited license to CONTROL SYSTEM PRODUCT software intended for use by Licensee as a player of pre-recorded datasets generated on other devices. Such a system cannot record or store new motion, unless it possesses such features for a time-limited duration before the software disables itself. The system functions with some features disabled in order to achieve the specific goal of prohibiting recording, but neither the standard software functionality nor its license are otherwise limited by the Licensor. Any attempt to circumvent the limitations above is considered a breach which will terminate this End User License Agreement.

#### **11. “Virtual Overdrive” Licenses**

a. If this license is a “Virtual Overdrive ” license:

A Virtual Overdrive license is a limited license to CONTROL SYSTEM PRODUCT software intended for use by Licensee as a demonstration of software features and a tool to view and modify configurations. Such a system may not be used to stream or actuate motion of any kind, nor may any input or output device interface with the system, nor may the system be used for commercial or production purposes. Any attempt to circumvent the limitations above is considered a breach which will terminate this End User License Agreement.

#### **12. “Test Only” Licenses**

a. If this license is a “Test Only” license:

A Test Only license is a limited license to CONTROL SYSTEM PRODUCT software intended for use by Licensee as a temporary tool for configuring equipment. Such a system is fully functional for a time-limited duration before the software disables itself, but the system may not be used for commercial or production purposes. Any attempt to circumvent the limitations above is considered a breach which will terminate this End User License Agreement.

#### **13. Third Party Controller Integration**

The integration into a CONTROL SYSTEM PRODUCT of third-party or Licensee motion controllers containing CPU or micro-controller logic units, which control or influence motion, voids any warranties expressed or implied of the Overdrive system, though Licensee retains a license to use the Overdrive system. This restriction does not apply to any input or output signal transducers or safety-monitoring PLCs which interface benignly with the Overdrive system. In the case of alleged malfunction of a CONTROL SYSTEM PRODUCT with third party integration, any Licensor test or inspection of the behavior of such a hybrid system is billable to the Licensee at the then-current hourly tech support rate.

#### **14. Winches and Stunt Systems**

The use of a CONTROL SYSTEM PRODUCT with rotary winches of any kind, for moving valuable hardware or personnel such as in “stunt” applications, requires testing with a “dummy payload” such as a sandbag. Both the initial motion path and any subsequent re-configuration of a motion path must

be first generated and tested with the “dummy payload” before valuable hardware or personnel may be moved by the winches. Additionally, a second person who is not the Overdrive computer operator, and whose sole duty is to monitor the motion for safety while holding an “emergency stop” device, must be present at all times a valuable payload is moved with winches. Failure to take the above precautions voids any warranties expressed or implied of the Overdrive system, though Licensee retains a license to use the Overdrive system. Licensee of such a system consents to a usage audit requested by the Licensor, with such audit to take place no more frequently than on an annual basis. In the case of alleged malfunction of a CONTROL SYSTEM PRODUCT with winches, any Licensor audit or inspection of such a system is billable to the Licensee at the then-current hourly tech support rate.

## **15. General Provisions**

- a. **Severability.** Should any term or provision of this EULA be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) and the remainder of this EULA shall not be affected.
- b. **Governing Law.** This EULA shall for all purposes be governed by and interpreted in accordance with the laws of the State of California. Any legal suit, action, or proceeding arising out of or relating to this EULA shall be commenced in a federal or state court in the State of California.
- c. **Modification and Waiver.** Any modification, amendment, supplement, or other change to this EULA must be in writing and signed by a duly authorized representative of Licensor and Licensee. All waivers must be in writing.
- d. **Relationship.** Licensor and Licensee are independent contracting parties. This EULA shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.
- e. **Force Majeure.** Neither party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, or inability to obtain any export or import license or other approval of authorization of any government authority.
- f. **Notice.** All notices, statements and reports required or permitted by this Agreement shall be in writing or facsimile and deemed to have been effectively given and received on the date of mailing or transmission.
- g. **Entire Agreement.** This EULA constitutes the entire, full and complete Agreement between the parties concerning the subject matter hereof, and they collectively supersede all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties.