

IMPORTANT NOTICE

The software and related documentation that you are about to access (“**Software**”, as further defined below) is offered to you (either an individual or a legal entity) by **QNX Software Systems Ltd.** (“**QSS**”) of 175 Terence Matthews Crescent, Kanata, Ontario, Canada K2M 1W8 (voice: 613-591-0931, fax: 613-591- 3579) for use only in accordance with the terms of the QNX End User License Agreement below. Some Software components have supplementary or alternative end user license agreement terms, as noted in below.

BY ANSWERING “A” OR “I AGREE” DURING THE DOWNLOAD OR INSTALLATION OF THE SOFTWARE, OR OTHERWISE ATTEMPTING TO DOWNLOAD, COPY, INSTALL, OR USE ANY PART OF THE SOFTWARE, YOU ARE REPRESENTING THAT YOU HAVE READ AND AGREE TO BE BOUND BY THESE AGREEMENTS. NOTHING ELSE GRANTS YOU PERMISSION TO COPY, USE OR MODIFY THE SOFTWARE OR ITS DERIVATIVE WORKS. THESE ACTIONS ARE PROHIBITED BY LAW IF YOU DO NOT ACCEPT THESE LICENSE AGREEMENT TERMS. DO NOT PROCEED UNLESS YOU ARE ABLE AND WILLING TO ENTER INTO AND COMPLY WITH THESE AGREEMENTS. IF YOU HAVE ANY QUESTIONS CONTACT QSS BEFORE YOU ATTEMPT TO COPY, INSTALL OR USE ANY PART OF THE SOFTWARE.

QNX® Momentics® End User License Agreement

This QNX Momentics End User License Agreement (comprising Part A – Background, Part B – Standard Terms & Conditions, and Part C – Supplementary / Alternative Third Party Software Terms, collectively “**this Agreement**”) is a legal agreement between you and QSS, and is made effective as of the date of your acceptance of this Agreement, as defined above. The parties agree as follows.

Part A - Background.

A1 QSS has developed and licenses a general purpose modular real-time operating system known as the QNX Neutrino® RTOS (“**Neutrino RTOS**”). Its microkernel architecture provides an extensible operating system framework, which is based upon the foundational components of the Core OS technology. Additional OS services are implemented by plugging in modules from other elements of the Neutrino RTOS (e.g., Networking, File Systems, GUI, Web Client (browsers), etc.). QSS offers bundled software tools, known as QNX Momentics development suites, for developers to use to create Neutrino RTOS-based devices (“**Target Systems**”, as further defined below). These development suites include a variety of development tools, including compilers, debuggers, libraries, headers, utilities, sample source code, etc. See the QNX Momentics Development Suite & Neutrino RTOS License Guide at http://licensing.qnx.com/published/eula/QDSL_G1_02.html (“**License Guide**”) for more details of what’s included and how it is provided. You can also contact QSS for a hardcopy.

Embedded system developers typically build Target Systems using the Neutrino RTOS and QNX Momentics development suits by:

- (a) developing the requisite code to make the Neutrino RTOS operational on the customer’s target hardware (i.e., a board support package comprising IPL, start-up and drivers – various parts of which may be available from QSS in binary form for supported processors and peripherals or, alternatively, which may be developed from scratch or derived from QSS-supplied sample source code); and
- (b) integrating Neutrino RTOS object code programs, libraries and utilities with files the developer generates using QNX Momentics development suite tools in order to define the operating system’s operational constraints, to tailor its functionality and, if equipped with a GUI, to tailor its appearance, in order to meet the requirements of the intended device.

Over the course of a Target System’s life cycle, developers typically upgrade hardware platforms (requiring a repetition of step (a) above) and/or software stacks (e.g., to adopt new releases of the Neutrino RTOS, third party software and/or custom components) in order to enhance the device’s performance and functionality.

A2 This Agreement is intended to provide you with license rights to a copy of the Neutrino RTOS and QNX Momentics development suite to support your Target System development, testing, support, maintenance and enhancement efforts. These products are generally licensed on a “Licensed Seat” basis (see below), except for certain source code packages that are licensed on a “Project” basis (also explained below). Some features and/or components are only available in certain products or in optional packages. See the License Guide for more details or contact your authorized QSS sales representative.

Please note that this Agreement does not offer any support or custom engineering services (see <http://www.qnx.com/support/index.html> for an explanation of QSS’s Standard and Priority Support Plan offerings), nor does it authorize any Software distribution. Contact your authorized QNX sales representative for more information about QSS support plans, or to inquire about your custom engineering service and runtime distribution license options.

A3 You may require one or more license keys or passwords from QSS to install and use the Software (“**License Keys**”). License Keys for evaluation licenses may be time limited. All License Keys are to be treated as Confidential Information of QSS in accordance with the provisions of Section B4 (Confidential Information).

Part B - Standard Terms & Conditions

B1 General Definitions. In this Agreement:

- (a) **“Contractors”** means independent contractors performing services for your benefit that are substantially similar to those performed by you or your employees.
- (b) **“Commercially Released”** means formally released, generally available, and fully supported by QSS. It does not include “experimental”, “engineering”, “beta”, or “unsupported” components.
- (c) **“Derivative Work”** means any modification, adaptation, enhancement, translation, or combination of software source code that, in the absence of this Agreement or other authorization from QSS or its licensors, would constitute infringement of their Intellectual Property under applicable law.
- (d) **“Documentation”** means any developer documentation, read-me files and release notes that are provided in or for Commercially Released Software.
- (e) **“Error”** means when the Software does not behave the way the associated Documentation says it should and the problem can be reproduced using the Software on a Reference Target. It does not include problems resulting from modifications to, or incorrect or improper use of, the Software.
- (f) **“Intellectual Property”** means all patent rights, copyrights and rights relating to the protection of confidential information arising under statutory or common law, whether or not perfected.
- (g) **“License Guide”** means version QDSLGL1_01 QNX Momentics Development Suite & Neutrino RTOS License Guide published at http://licensing.qnx.com/published/eula/QDSLGL1_02.html. Copies may also be obtained directly from QSS.
- (h) **“Licensed Seat”** means one Neutrino RTOS developer (individual) using the Software on one host or one client computer to perform Neutrino RTOS development. It does not include two or more developers using one or more computers to share the same Software (e.g., using QNX Phindows or otherwise), even if their use is only part-time and/or is not concurrent. All Software is licensed on a Licensed Seat basis unless otherwise expressly provided by QSS in writing.
- (i) **“Object Code”** means computer-programming code substantially in binary form, and includes header files of the type necessary for use or interoperation with other computer programs. It is directly executable by a computer after processing or linking, but without compilation or assembly.
- (j) **“Project”** means an undertaking by a team of developers to develop, deploy and maintain a single product that is aimed at a particular application or market category and that is identified by a unique name or mark (e.g., project code, trademark or model designation) which may change from time to time during the product’s life cycle. Cosmetic changes (e.g., rebadging ODM products), re-targeting of market segments, and updates in the normal course of product life cycle maintenance (e.g., error corrections, minor enhancements and cost reduction changes) do not constitute new Projects. However, material changes to a released product, such as a fundamental change to the hardware foundation (e.g., to change processor/instruction sets), or a significant alteration of the product’s functionality (e.g., adding price-differentiating or new-product-generation-defining capabilities, or VARs or ODMs tailoring their products to meet customer-specific requirements) represent new Projects.
- (k) **“Project Software”** means Software components that are expressly identified in the License Guide as licensed by QSS on a Project basis.
- (l) **“Reference Target”** means, in respect of a particular Software release, a hardware platform on which QSS commercially supports the Commercially Released Software (contact support@qnx.com for a current list, also see http://www.qnx.com/support/sd_hardware).
- (m) **“Software”** means all of the Object Code and Source Code included in the version and release of the QNX Momentics Development Suite for which you have paid to QSS all of the applicable license fees, including those for any extra-cost options or bundles and/or Project Software licensed under this Agreement. It includes associated Documentation, any Software updates that have been provided to you under a valid Standard Support Plan subscription for your Licensed Seat/Project, and any Solutions provided to you pursuant to a QNX Priority Support Plan subscription or pursuant to Section B6 (Limited Warranty). The contents and characteristics of each version of the QNX Momentics development suite (e.g., QNX Momentics Standard Edition, QNX Momentics Professional Edition, etc.) are further described in the License Guide.
 - (i) **“Type I Software”** means any Commercially Released Software other than Type II or Type III Software. It includes QSS proprietary code and may include some third party proprietary and open source code elements.
 - (ii) **“Type II Software”** means any Software identified as “Type II” or “Collateral Code” in the License Guide. Type II Software may be licensed to you under alternative, or sublicensed to you under amended, end user license terms – as referenced in Part C. It may include third party proprietary and open source code elements.
 - (iii) **“Type III Software”** means any Software identified as “Type III” or “As Is Code” in the License Guide. Type III Software is licensed, or sublicensed to you strictly on an “as is” basis, and may be licensed to you under alternative, or sublicensed to you under amended, end user license terms – as referenced in Part C. It may include third party proprietary and open source code elements.
 - (iv) **“Runtime Components”** means any Software components that are intended to be integrated into, and to be distributed as an integral part of, Target Systems – as described in applicable Documentation. Runtime Components of the Software are also described in the QNX Neutrino Runtime Operating System Runtime Technologies section of the License Guide.
 - (v) **“Development Tool Components”** means any Software components other than Runtime Components.
- (n) **“Solution”** means an explanation, workaround or patch that addresses an Error.
- (o) **“Source Code”** means computer-programming code that is human readable when printed out or displayed.
- (p) **“Target System”** means any product into which any Software has been wholly or partially integrated, each of which must: (i) significantly enhance the function and value of the Software, and (ii) have substantially different principal purposes than those of the Software.
- (q) Other capitalized terms defined in any part of this Agreement will have their indicated meaning throughout this Agreement.

B2 License Rights.

- (a) **Grant of Software License.** Subject to the terms of this Agreement and during the applicable term, QSS hereby grants to you, for one Licensed Seat, a non-exclusive, personal and non-transferable license to:
 - (i) copy the Software as required to install it on, and to follow normal back-up and archiving practices for, a development host;
 - (ii) use, execute, display and perform the Software, on the development host and in accordance with associated Documentation, for the purpose of developing, testing and maintaining Target Systems;
 - (iii) create Derivative Works of Software Source Code and, subject to the provisions of Section B4 (Confidential Information), copy, compile, link, use, execute, display and perform such Derivative Works, on the development host and in accordance with associated Documentation, for the purpose of developing, testing and maintaining Target Systems;

- (iv) copy, link, use, execute, display and perform the Runtime Components, and the Object Code of any Derivative Works created pursuant to (iii) above, as required to install and use them on:
- (1) a reasonable number of Target Systems solely for internal Target System development and testing purposes, and one Target System for demonstration, promotion, evaluation or training purposes; or
 - (2) one Target System for productive use (i.e., end user use of a Target System by you).
- Additional runtime licenses for such use may be purchased from QSS.

All Software is licensed on a Licensed Seat basis unless otherwise expressly provided by QSS in writing (e.g., see subsection (b) below).

- (b) **Project Software.** Project Software may be shared amongst any Licensed Seats in a Project, but only to the extent and for so long the Licensed Seat is assigned to that Project. Accordingly, the license in subsection (a) above (Grant of Software License) shall extend to any Project Software for which the associated Project license fees have been paid to QSS, and you shall have a limited license to internally distribute Project Software to other developers for use with Licensed Seats within the Project.
- (c) **Re-assigning Your Licensed Seat.** Except for the case of Project Software, your license is not project-specific and, subject to Section B8 (Term & Termination), the term of this Agreement is perpetual. You may re-assign your Licensed Seat from time to time from one developer to another (including to a developer employed by your Contractor) when a licensed developer is indefinitely re-assigned to other duties or is otherwise re-deployed (e.g., when their project ends), provided that you always remain responsible to QSS for the full performance of any obligations, and compliance with any restrictions, required by this Agreement. Alternatively, you may assign this Agreement pursuant to the provisions of Section B9(b) (Assignment). You agree to promptly advise QSS of the office location where the Licensed Seat is initially deployed for licensed use. Project Software may not be re-assigned to new Projects.
- (d) **License for Software Source Code.** Software Source Code may contain license headers that refer to the QNX Open Community License ("OCL"), QNX Community License ("QCL"), and/ or QNX Confidential Source License ("CSL", collectively the "QNX Source Code Licenses"). Notwithstanding reference to the QNX Source Code Licenses, the Software Source Code is licensed to you pursuant to the terms of this Agreement.
- (e) **Third Party Software.** Parts of the Software may contain third party code. Type I Software is licensed (or sublicensed) to you under the standard terms of this Agreement and may include additional license terms. Type II Software and Type III Software may be licensed to you under amended or alternative terms. Those terms, and any Software authorship attribution and like notices that QSS is obliged to provide to you, are referenced in Part C or the License Guide and are published in the corresponding Third Party Open Source License Terms Guide at <http://licensing.qnx.com/published/eula/index.html>. Unless expressly provided otherwise, all third party code is provided to you solely for use in association with the Neutrino RTOS.
- (f) **License Limitations.** All rights not expressly granted are reserved to QSS and its licensors. Except as expressly provided herein, this Agreement does not authorise the sub-licensing, transfer or distribution of any part of the Software to any third party.
- (g) **Use Restrictions.** Unless expressly permitted by this Agreement, by applicable law, or by QSS in writing, you agree not to:
- (i) alter, remove, or cover any trademark, logo, proprietary or licensing notices, labels or marks in or on any part of the Software, including in any "about" box, "flash" / "splash" screen or documentation. You agree to use reasonable efforts to ensure that all copies of the Software bear any notices, labels or marks contained in or on the original;
 - (ii) use unauthorised License Keys;
 - (iii) decompile, disassemble, decrypt, extract, unbundle, translate or otherwise attempt or assist others to reverse engineer any part of the Software, including circumventing any License Key activation or evaluation period expiry mechanisms, except as necessary, when permitted by an applicable law, to correct defects or achieve inter-operability with complementary programs, for your purposes only, but only if QSS has refused to provide the necessary information or assistance; or
 - (iv) directly or indirectly, export, import or transmit the Software to any country in contravention of the laws of that country or the laws of Canada or the United States. Without restricting the foregoing, the Software contains encryption capabilities and certain governments may regulate the export or import of the Software.
- Unless QSS has provided you with express written consent, the Software may not be used in any application in which a failure of the Software could lead to death, personal injury, or severe physical or property damage (collectively, "**High-Risk Applications**"), including but not limited to the operation of nuclear facilities, mass transit systems, aircraft navigation or aircraft communication systems, air traffic control, weapon systems, and direct life support machines. QSS expressly disclaims any express or implied warranty or condition of fitness for High-Risk Applications.
- (h) **Restricted Rights.** If you are a U.S. government or quasi-government entity, then you should be aware that the Software is a "commercial item", as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.1212 (Sept. 1995). Consistent with 48 C.F.R. 12.1212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all such customers acquire the Software with only those rights set forth herein. Use, duplication, or disclosure by the U.S. government is subject to restrictions as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii) (OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable. QNX Software Systems Ltd.

B3 Ownership.

- (a) **Software.** QSS and its suppliers retain all right, title and interest in and to the Software, including all Intellectual Property therein. All copies will be considered Software for the purpose of this Agreement and shall remain the property of QSS and its suppliers. Subject to any underlying rights in the Software, and any Feedback provided under subsection (b) below, you retain all right, title and interest in and to any Derivative Works and application software that it develops pursuant to this Agreement.
- (b) **Feedback.** At your option, QSS would like to get feedback about its products (i.e., regarding their utility, reliability, performance, user acceptance, and any features or functionality that you would like to see in future versions). QSS would also like to hear about any

problems that you have encountered. In order to incorporate suggested improvements, QSS requires, and you hereby agree, to assign and waive all right, title and interest (if any) in and to any QSS-specific Improvements, including any associated Intellectual Property and moral rights, to and on behalf of QSS. In this paragraph "QSS-specific Improvements" means any work-arounds, error corrections, enhancements or other suggestions or improvements to the Software that you provide to QSS.

B4 Confidential Information.

- (a) Definition. "Confidential Information" means any information disclosed by one party ("Discloser") to another party ("Recipient") for the purpose of performing or exercising rights under this Agreement ("Purpose"): (i) in source code, (ii) in a document clearly marked "Confidential" (or equivalent), or (c) otherwise in any manner or form, provided it is clearly identified at disclosure as confidential and, within thirty (30) days of disclosure, is summarized and delivered to Recipient in a document marked "Confidential" (or equivalent). Confidential Information does not include any information which is:
- (i) available to the public other than by reason of Recipient's breach of this Agreement;
 - (ii) rightfully received by Recipient from a third party without disclosure or use restrictions;
 - (iii) independently developed by or on behalf of Recipient;
 - (iv) previously known to Recipient other than by reason of a prior confidential disclosure from or on behalf of Discloser;
 - (v) hereinafter disclosed by Discloser to a third party without disclosure restrictions; or
 - (vi) compelled to be disclosed in a public manner pursuant to legal, judicial or administrative proceedings or otherwise as required by law, subject to Recipient giving all reasonable prior notice to Discloser to allow it to seek protective or other court orders.

- (b) Use and Disclosure Restrictions. Recipient shall only:
- (i) use Discloser's Confidential Information as necessary to achieve the Purpose for which it was disclosed, and
 - (ii) disclose Discloser's Confidential Information to persons who have a need to know to achieve the Purpose for which it was disclosed, and who are employees of Recipient, or of Recipient's affiliates, or of Recipient's and Recipient's affiliates' Consultants or professional advisors, provided that all recipients within such classes are bound by law or are subject to agreements that provide obligations at least as protective of the Confidential Information as the provisions of this Section B4.

Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than reasonable care, to prevent the unauthorized dissemination or publication and unauthorized use of the Confidential Information as Recipient uses to protect its own confidential information of like nature. Recipient shall only make copies of the Confidential Information as necessary to achieve the Purpose for which it was disclosed. Recipient shall reproduce Discloser's proprietary rights notices on all copies in the same manner in which such notices were set forth in or on the original. The mingling of Confidential Information with information that falls within one or more of the exceptions in this Section B4 shall not impair the status of, or the obligations of confidence and non-use respecting, the confidential parts.

- (c) Duration of Obligations. The provisions of this Section B4 shall only apply to Confidential Information first disclosed on or after the date of this Agreement. Each Recipient's duty to protect Confidential Information disclosed to it will survive termination of this Agreement indefinitely in respect of source code, but will end on the third anniversary of the date of termination of this Agreement in respect of all other Confidential Information. All Confidential Information furnished by Discloser to Recipient, and all copies thereof, which are in the possession or control of Recipient or its disclosees shall be and remain the property of Discloser and shall be promptly returned to Discloser or destroyed on termination of this Agreement. Recipient may retain one copy of Discloser's Confidential Information in the confidential, restricted access files of its legal department for use only to prove compliance with the terms of this Agreement.

B5 IP Indemnity.

- (a) QSS will defend you against any Infringement claims, and indemnify and hold you harmless from any Infringement damages finally awarded, in any third party action against you based on the reproduction or use of Type I Software in accordance with the terms of this Agreement, provided that you give QSS prompt notice of, as well as all authority, information, and assistance (at QSS' expense) necessary or desirable to defend, such claims. In this Section B5, "Infringement" means: (i) infringement of copyright; (ii) misappropriation of trade secrets by QSS; or (iii) infringement by the Type I Software of any patent, where such patent infringement is inevitable when reproducing or using the Infringing Software alone or in conjunction with equipment that is essential for its use. Infringement does not include any infringement or misappropriation of any kind caused by the creation, reproduction, combination, use, distribution or sale of Derivative Works, or any other modifications of the Software, made by or for you.
- (b) Remedy. With respect to any finding of Infringement, or any reasonable belief of QSS that Infringement may occur, QSS will, at its sole expense and option: (i) procure for you the right to continue using the Infringing Software; (ii) replace the Infringing Software with non-infringing software of comparable function; (iii) modify the Infringing Software to be non-infringing; or (iv) if none of the foregoing alternatives is reasonably available to QSS, terminate your right to the Software, but only to the extent necessary to avoid the Infringement. You will have the right to terminate all of your rights if you determine such partial termination renders your remaining rights ineffective. Upon such full or partial termination, QSS will refund to you, pro-rata to the extent of such termination, the license fees paid by you that are associated with the terminated rights.
- (c) Exclusive Remedy. This Section B5 states your exclusive remedy for infringement of intellectual property rights by the Software.

B6 Limited Warranty.

- (a) Background. As indicated in Part A, the Neutrino RTOS Software is a general purpose modular realtime operating system. You will select a subset of its modules for use in a unique hardware and software environment to achieve your desired functionality. Ultimately, you may find that you cannot achieve your desired results. While QSS is committed to providing a versatile and reliable product, it does not warrant that the Software will function in accordance with corresponding Documentation in every combination of hardware platform, software environment and Software configuration. You acknowledge that software bugs are likely to be encountered when Software is used in your particular application. You therefore accept the responsibility of satisfying yourself that the Software is suitable for your intended use. This

includes conducting rigorous testing of the Software in combination with your value-added software application(s) on your target hardware platform prior to its initial release, as well as prior to the release of any related software or hardware modifications or enhancements. QSS offers a Priority Support Plan and custom engineering services to help developers identify and solve particular Software implementation issues.

- (b) **Warranty.** QSS warrants to you for a period of ninety (90) days from the date of your acceptance of this Agreement, as indicated above, that the Commercially Released Software will be Error free. Your sole remedy, and QSS' sole obligation, for any breach of this warranty will be, at QSS's option, to either:
- (i) provide you with a free Solution for use as an interim fix until QSS provides you with a free Commercially Released Software update that corrects the problem; or
 - (ii) terminate this Agreement pursuant to Section B8 (Term & Termination), in which case QSS will provide a refund of any license fees that you paid to QSS pursuant to this Agreement for your Licensed Seat and Project Software license (if any) upon confirmation that you have complied with Section B8(d) (Implication of Termination).

QSS also warrants any tangible media on which it delivers the Software (if any), will be free from defects in material and workmanship under normal use for a period of ninety (90) days from the date of QSS's corresponding invoice. QSS is not responsible for media defects that result from accident or abuse. Your sole remedy for any breach of this media warranty will be to receive replacement media.

- (c) **Warranty Disclaimer.**
EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE PRODUCTS AND ANY SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR ANY KIND, INCLUDING IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT. NOTHING STATED IN THIS AGREEMENT WILL IMPLY THAT THE OPERATION OF ANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED. OTHER WRITTEN OR ORAL STATEMENTS BY QSS, ITS REPRESENTATIVES OR OTHERS DO NOT CONSTITUTE WARRANTIES OF QSS.

B7 Limitation of Liability.

- (a) **Limitation.**
IN NO EVENT WILL QSS OR ITS SUBSIDIARIES, OR THEIR OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS, OR LICENSORS, (COLLECTIVELY, QSS AND ITS REPRESENTATIVES) BE LIABLE TO YOU, YOUR CONSULTANTS, OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, INCIDENTAL SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, ANY USE OR INABILITY TO USE SOFTWARE PRODUCTS, OR ANY SERVICES PROVIDED OR INABILITY TO OBTAIN SERVICES, EVEN IF QSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM.

IN NO EVENT WILL THE AGGREGATE LIABILITY OF QSS AND ITS REPRESENTATIVES FOR ANY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL FEES YOU HAVE PAID TO QSS FOR USE OF THE SOFTWARE UNDER THIS AGREEMENT. THE PROVISIONS OF SECTIONS B6(c) WARRANTY DISCLAIMER) AND THIS SECTION B7 SHALL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (b) **Third Party Beneficiaries.** Certain licensors of QSS, a full list of which is available upon request, are third-party beneficiaries to this Agreement to the extent that this Agreement contains provisions that relate to your use of software in which such licensors have an interest. These provisions are made expressly for the benefit of such licensors and are enforceable by them in addition to QSS. NEITHER QSS NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO YOU OR OTHER THIRD PARTIES, ANY WARRANTY OR REPRESENTATION ON BEHALF OF QSS'S LICENSORS.

B8 Term & Termination

- (a) **Term of this Agreement.** This term of this Agreement will commence on the date of your acceptance of this Agreement, as indicated above, and will continue indefinitely thereafter until terminated under subsections (b) or (c) below.
- (b) **Term of Evaluation License.** The term of any Software evaluation license or Software product trial will terminate on the earlier of: the end of the applicable evaluation / trial period, or thirty (30) days after notice from QSS.
- (c) **Termination.** You may terminate this Agreement at any time. It will be deemed to terminate immediately if you fail to comply with any material term herein or if you fail to pay within thirty (30) days of receipt of invoice (or such longer period as may be expressly permitted by QSS in writing) any license fees invoiced by QSS for Software licensed pursuant to this Agreement.
- (d) **Implication of Termination.** The provisions of this Agreement that are expressed or by their sense and context are intended to survive the termination of this Agreement will survive, including Section B3 (Ownership), B4 (Confidential Information), B5 (IP Indemnity), B6 (Limited Warranty), B7(Limitation of Liability), this Section B8 and Section B9 (General). Upon termination your license rights end and you shall immediately destroy all whole or partial copies of the Software that are in your possession or control. Termination is without prejudice to any right or remedy that may have accrued, or be accruing to either party prior to termination.

B9 General

- (a) **Entire Agreement.** This Agreement, comprising Parts A, B and C, along with the License Guide and any other terms expressly referenced by this Agreement (including third party terms referenced in Part C or in the License Guide), constitutes the entire agreement between the parties pertaining to its subject matter and supercedes any prior or contemporaneous agreement, representation, statement, negotiation or undertaking dealing with the same subject matter. No amendment, modification or waiver of any part of this Agreement will be binding

unless in a written document that expressly refers to this Agreement and that is signed by both parties. Except as otherwise expressly contemplated in Part A, the terms and conditions of this Agreement will prevail over any inconsistent or additional terms or conditions of either party's purchase orders or invoices. The terms and conditions of this Agreement will prevail over the terms and conditions of the QNX Source Code Licenses.

- (b) **Assignment.** Subject to the export restrictions in Section B2(f), you may assign this Agreement to a third party who has provided QSS with prior written acknowledgement of their acceptance of the terms of this Agreement. In such a case you must transfer your License Keys to the assignee and destroy all whole or partial copies of the Software and License Keys that are in your possession or control. Project Software may only be assigned in conjunction with a change of ownership, merger, acquisition, sale or transfer of all or substantially all of the your business or assets relating to the Project. Any other attempted assignment or delegation in violation of the foregoing will be void and of no effect. This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- (c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario, Canada without regard to the conflicts of laws provisions thereof. The parties hereby irrevocably waive: (1) the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and (2) any right to a trial by jury regarding the resolution of any dispute between the parties hereto arising out of or in connection with this Agreement.
- (d) **Reference Account.** The parties each agree to act as a reference account for each other for activities relating to the Software and your Target System, provided they are given an opportunity to pre-approve the intended reference(s), such approval not to be unreasonably withheld or delayed. Reference activities include, but are not limited to: press releases announcing design wins, media/analyst references, sales/investor references, spotlight on activities in collateral (e.g., case studies, ROI studies, white papers), joint marketing (e.g., trade show events, web casts, seminars, by-lined articles, video testimonials, advertising campaigns, speaking engagements), internal marketing support, and display of each other's name (and, if applicable, display of each other's logo) in marketing/sales collateral and advertising.

PART C - Supplementary / Alternative Third Party Software Terms.

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