

QNX MOMENTICS END USER LICENSE AGREEMENT

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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(R) RTOS ("Neutrino RTOS"). Its microkernel architecture provides an extensible operating system framework, which is based on the foundational components of the Platform Core technology. Additional operating system services are implemented by plugging in modules from other elements of the Neutrino RTOS (e.g., File Systems, GUI, Extended Networking, SMP, Browsers, etc.).

QSS also offers related software development tools ("QNX Momentics Development Tools") for developers to use to create Neutrino RTOS-based devices ("Target Systems", as further defined below). The QNX Momentics Development Tools include compilers, debuggers, libraries, headers, utilities, sample source code, etc., in either a command line (Standard Edition) or integrated development environment (Professional Edition) form. Developers may add to their suite by selecting the desired "Technology Development Kits" (sometimes referred to as "TDKs") and/or source components ("Source Kits"). The optional TDKs and Source Kits provide a greater range of technology options and customization capabilities. See the QNX Momentics Development Suite License Guide at http://www.qnx.com/legal/licensing/dev_license/eula/qdslg1_05d.html ("License Guide") for a more detailed description of what's included in each offering. You can also contact QSS for a hardcopy.

In order to do any development you require the "QNX Momentics Development Suite" which includes certain base QNX Momentics Development Tools and Neutrino RTOS runtime components; the QNX Momentics Development Suite is offered in Professional and Standard Editions.

Embedded system developers typically build Target Systems using the QNX Momentics Development Tools by:

(a) developing the requisite code to make the Neutrino RTOS operational on their 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 which may otherwise be developed from scratch or derived from QSS-supplied sample source code); and

(b) integrating Neutrino RTOS programs, libraries and utilities with files they generate using the QNX Momentics Development 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 satisfy the requirements of the intended device.

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

A2 This Agreement is intended to provide you with license rights to the QNX Momentics Development Suite, and to TDK and Source Kit products that you have ordered, to support your Target System development, testing, support, maintenance and enhancement efforts. The QNX Momentics Development Suite products are generally licensed on a Development Seat basis (see below). TDKs and Source Kits are licensed on a Single Project, Platform or Field of Use basis (also explained below). Subscription licenses and Floating Development Seats may also be available, although some restrictions may apply. Certain Neutrino RTOS components come bundled with the QNX Momentics Development Suite, but must be separately licensed for redistribution. See the QNX Momentics License Guide for a more detailed licensing description.

Runtime components in the TDKs, as well as derivative works created using Source Kits, are generally re-distributable on a royalty-free basis (some exceptions apply - e.g., products with 3rd party royalty-bearing components and Source Kits containing source code for royalty bearing Neutrino RTOS components), provided they are for use in association with a Neutrino RTOS for which all applicable runtime royalties have been paid. Some features and/or components are only available in certain products, for certain target processors, or in optional packages. See the License Guide or contact your authorized QNX sales representative for more information and details on runtime distribution licensing.

Please note that this Agreement does not offer any support or custom engineering services (see <http://www.qnx.com/services/index.html> for an explanation of QSS's Standard and Priority Support Plan offerings). Contact your authorized QNX sales representative for more information about QSS support plans, or to inquire about your custom engineering service 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 and subscription 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) "Commercially Released" means formally released, generally available and fully supported by QSS. It does not include "experimental", "engineering", "beta", "trial" or "unsupported" components;
- (b) "Contractor" means an independent contractor performing services for your development project that are substantially similar to those performed by you or your employees;
- (c) "Derivative Work" means any work made by you, or for you by a Contractor pursuant to this Agreement, that is a revision, modification, translation, expansion, extension, collection, condensation or abridgement of any Software provided by QSS in Source Code form;
- (d) "Development Seat" means a Workstation used by one developer to perform Neutrino RTOS-based development using the QNX Momentics Development Suite Tools. It does not include any computers used by multiple developers to share the Software (e.g., using QNX Phindows or otherwise), even if their use is only part-time and/or is not concurrent;
- (e) "Documentation" means any developer documentation, reference specifications (e.g., POSIX), read-me files, release notes and License Guides that are provided by QSS in or for the Commercially Released Software;
- (f) "Error" means when the Commercially Released Software does not behave the way the associated Documentation says it should and the problem can be reproduced on a Reference Target. It does not include problems resulting from modifications to, or incorrect or improper use of, the Software;
- (g) "Field of Use" means multiple Single Project and/or Platform teams within the same company developing products for the same market segment (i.e., one of the Automotive, Networking, Medical, Military or Other Embedded markets);
- (h) "Floating Development Seat" means the Workstations of up to two developers sharing (consecutively not concurrently) a single License Key in order to use the Momentics Development Suite Tools to perform Neutrino RTOS-based development;
- (i) "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;
- (j) "License Certificate" means an original QSS issued and serialized document (in the form of a sticker, printed certificate, electronic authentication or otherwise) which authenticates software licensed under this Agreement. It typically: includes a License Key; specifies the nature of the license (i.e. Project Software, Licensed Seat, evaluation, etc.); and provides other details contemplated by this Agreement.
- (k) "Non-Commercial Purposes" means:
- (1) to evaluate the Software and to do exploratory development and preliminary "proof of concept" prototyping of Target Systems, Neutrino RTOS software applications and Neutrino RTOS device drivers, whether at home for personal use or at work as a prototyping tool. However, it does not extend to serious development of a commercial version of such items (e.g., "production intent"). If you want to continue using the Software for such development, then you will need to purchase a commercial license;
 - (2) to use the Software to develop new and to port your existing software applications and device drivers to the Neutrino RTOS, provided that such software applications and device drivers are solely for your own Personal Use (see below), or provided that you make them available for free use and distribution by other QNX Momentics Development Suite users under terms equivalent to the QNX Open Community License ("OCL", as published at <http://www.qnx.com/legal/licensing/other/index.html>). A commercial license is required for porting your software applications for commercial distribution. Contact your authorized QSS sales representative for more details about QNX Momentics PE for Alliances ("Alliance licenses"); and

- (3) to use Runtime Components as an end-user, provided that it is only for the personal use of an individual and not for the purpose of generating revenue or in-kind consideration, and provided that it is not for the productive use of the Neutrino RTOS in the operation of a business or enterprise ("Personal Use");

(l) "Object Code" means computer-programming code substantially in binary form, and includes header files of the type necessary for use or interoperability with other computer programs. It is directly executable by a computer or may require processing or linking (but not compilation or assembly);

(m) "OEM License Agreement" means a license agreement authorizing your distribution of the royalty bearing components of the Neutrino RTOS in your Target System;

(n) "Platform" means a team of developers within the same company who are developing a multi-purpose software platform (including but not limited to application-specific reference platforms) for other developers to use as the foundation for creating their own end user device (or a family of end user devices that share either a common hardware and software platform, or a common brand);

(o) "Project Software" means any Software identified on a License Certificate as being licensed on a Single Project, Platform or Field of Use basis and typically includes Technology Development Kit and Source Kit Software. For the purposes of B2(b) [Runtime Redistribution Rights], it does not include any Software components that normally get shipped in binary form as standard content of or bundled with the QNX Momentics Development Suite but which may be provided as part of a Project Software product: (1) in Source Code form, (2) in an enhanced form, or (3) merely as a packaging convenience. In the case of enhanced components, the Project Software includes the enhancements but not any part of the underlying QNX Momentics Development Suite components or Neutrino RTOS Software components that normally get shipped in binary form with the QNX Momentics Development Suite;

(p) "Reference Target" means in respect of a particular Software version:

- (1) for x86 based CPUs, those platforms listed at http://licensing.qnx.com/published/eula/x86rp1_00.html; and
- (2) for non-x86 based CPUs, a hardware platform for which QSS has a Commercially Released board support package as detailed in the License Guide for the QNX development software used to create the Runtime Configuration.

(q) "Runtime Components" means any Software components that are intended to be integrated into, and distributed as an integral part of, Target Systems - as described in applicable Documentation (including the "QNX Neutrino Realtime Operating System Runtime Technologies" section of the License Guide). It includes Derivative Works of Runtime Components provided by QSS in Source Code form. It does not include "experimental", "engineering", "beta" or "trial" components;

(r) "Single Project" means a team of developers within the same company who are developing a single end user device (including different models of that product that share a common hardware and software platform);

(s) "Site" means a building (or a campus comprised of buildings that exist within the same postal or zip code) where the QNX-based development is performed. It also includes remote locations used from time to time by developers who are normally based at the Site;

(t) "Software" means the Object Code and Source Code included in the QNX Momentics Development Suite, Technology Development Kit and Source Kit products for which you received a valid License Certificate and that you license pursuant to this Agreement. It includes: (1) associated Documentation, (2) corresponding Software updates or supplemental releases that you are entitled to receive and use at no additional charge under one of QSS's support plans, and (3) any Solutions that are provided to you pursuant to a QNX Priority Support Plan subscription or Section B6 [Limited Warranty]. The contents and characteristics of each QNX Momentics Development Suite, TDK and Source Kit product 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 typically includes QSS proprietary code and may include some third party proprietary code and/or open source code elements;
- (ii) "Type II Software" means any Commercially Released Software identified as "Type II" 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 identified or referenced in Part C. It may include third party proprietary and/or open source code elements;
- (iii) "Type III Software" means any Commercially Released Software identified as "Type III" in the License Guide and all Software that is not Commercially Released. 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 identified or referenced in Part C. It may include third party proprietary and/or open source code elements;
- (u) "Solution" means an explanation, workaround or patch that addresses an Error;
- (v) "Source Code" means computer-programming code that is human readable when printed out or displayed;
- (w) "Target System" means any product into which the microkernel portion of the Neutrino RTOS and any other elements of the Runtime Components have been wholly or partially integrated, and which: (1) significantly enhances the function and value of the Runtime Components, and (2) has a substantially different principal purpose than that of the Runtime Components, or any other runtime components offered by QSS as part of its other products;
- (x) "Workstation" means a developer's workstation, lap-top and/or home computer used to perform Neutrino RTOS-based development, provided the Software is only used on one computer at a time;
- (y) Other capitalized terms defined in any part of this Agreement will have their indicated meaning throughout this Agreement.

Contact licensing@qnx.com if any hypertext links are inoperable or fail to link you to the referenced content.

B2 License Rights.

(a) Software Development License. Subject to the terms of this Agreement (including without limitation those specific to third party software - see section B2(f) [Third Party Software] below - and any patent license exceptions noted in the License Guide) and payment of all applicable license fees (including but not limited to renewal fees for any subscription-based licenses), QSS hereby grants to you for each applicable license purchased from QSS (or from one of its authorized distributors) for Software to be used pursuant this Agreement, a non-exclusive, personal, non-sublicensable and non-transferable license to:

- (1) copy the Software, other than Project Software, as required to install it on and to follow normal back-up and archiving practices for: (i) one developer's Workstation for each Development Seat license, and (ii) up to two (2) developers' Workstations at a single Site for each Floating Development Seat license (which includes copying associated License Key(s) and any key administration software as required to install it on a license server);
- (2) copy the licensed Project Software as required to install it on and to follow normal back-up and archiving practices for all Workstations in (1) above ("Authorized Workstations") within the licensed Single Project, Platform or Field of Use;
- (3) use, execute, display and perform the Software on Authorized Workstations in accordance with associated Documentation, for the purpose of developing, testing and maintaining Target Systems;

- (4) 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 Authorized Workstations in accordance with associated Documentation, for the purpose of developing, testing and maintaining Target Systems; and
- (5) copy, link, use, execute, display and perform the Runtime Components, and the Object Code of any Derivative Works created pursuant to (4) above, as required to install and use them: (i) on a reasonable number of Target Systems solely for internal Target System development and testing purposes; and (ii) on one Target System for demonstration, promotion, evaluation or training purposes, provided that such copy is not left with third parties.

(b) Runtime Redistribution License. Subject to the terms of this Agreement (including without limitation those specific to third party software - see section B2(f) [Third Party Software] below - and any patent license exceptions noted in the License Guide) and payment of all applicable license fees (including but not limited to renewal fees for any subscription-based licenses and runtime royalties for separate royalty-bearing third party Runtime Components noted in the License Guide), QSS hereby agrees to grant to you in your OEM License Agreement for each applicable license purchased from QSS (or from one of its authorized distributors) for Project Software to be used pursuant this Agreement, a non-exclusive, personal and non-transferable license to:

- (1) reproduce Object Code copies of the Runtime Components of the Project Software under the terms of your OEM License Agreement as necessary to: (i) manufacture Target Systems, and (ii) produce Target System software updates and back-up media;
- (2) reproduce, abridge, condense and translate portions of QSS-authored parts of the Project Software Documentation under the terms of your OEM License Agreement, but only as necessary to create, distribute and update Target System user documentation;
- (3) sub-license Object Code copies of the Runtime Components of the Project Software made pursuant to section B2(b)(1) above to end users solely for use as integral parts of validly licensed Target Systems under the same end user license agreement terms that apply to your sublicensing of other components of the Neutrino RTOS under your OEM License Agreement; and
- (4) distribute Object Code copies of the Runtime Components of the Project Software and Project Software Documentation made pursuant to sections B2(b)(1) and (2) above to end-users solely for use as integral parts of validly licensed Target Systems and under the same distribution terms that apply to your distribution of other components of the Neutrino RTOS under your OEM License Agreement.

Except as noted above, such reproduction and distribution of Project Software shall be royalty-free provided that you have paid to QSS a Single Project, Platform or Field of Use license fee for the Project Software, and the corresponding License Certificate indicates that you have unlimited reproduction and distribution rights for the Project Software Runtime Components. Some Single Project Licenses may be available at reduced cost due to limits on the associated Runtime Component reproduction and distribution rights. These will be specified in your License Certificate. Project Software licenses specified to be for evaluation, trial or non-commercial uses do not qualify for these Runtime Component redistribution rights. This license does not authorize or entitle you to any royalty free distribution of Runtime Components of the Neutrino RTOS that normally get shipped in binary form as part of a QNX Momentics Development Suite. Contact QSS for information about your Neutrino RTOS OEM licensing options.

(c) Continuing Time Limited Licenses. If you received Software under an evaluation, subscription or other time-limited license, then your right to use the Software will end when the term of your license expires. At that time you may purchase a commercial license or renew your subscription. Alternatively, you may continue using the unlocked portions of the QNX Momentics Development Suite (including those components of the Neutrino RTOS normally provided in binary form with the QNX Momentics Development Suite) under the terms of this Agreement, provided that such use is limited solely to: (1) use for Non-Commercial Purposes; and

(2) use in a self-hosted (i.e., Neutrino RTOS hosted) development environment targeting x86 processors as well as iPAQ reference designs. Project Software is not eligible for use under this non-commercial license.

(d) Evaluation and Other License Limitations. Your license for any Software provided on: (i) an evaluation or trial basis is limited to use for Non-Commercial Purposes; and/or (ii) a demonstration basis is limited to loading and running the Software so you can marvel at how cool it is (you have no development rights).

(e) Deployment & Reassignment of Product Licenses.

- (1) QNX Momentics Development Suite licenses are not Single Project, Platform or Field of Use specific. You may deploy any commercial Development Seat or Floating Development Seat license to your developers (including to a developer employed by your Contractor). You may re-assign any such license 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]. However, you may not share Development Seats (or extend the sharing of Floating Development Seats beyond the permitted ratio) by passing or notionally re-assigning Software licenses back and forth amongst a group of developers.
- (2) Project Software licenses are specific to the licensed Single Project, Platform or Field of Use and may not be transferred or re-assigned in any manner.
- (3) QSS may require from time to time that you provide within thirty (30) days of notice a written report: (i) indicating the office location where Development Seat(s) were initially deployed, (ii) indicating the office location where Floating Development Seats are currently being used, along with the names of the developers using them, (iii) indicating the Single Projects, Platforms or Fields of Use currently using Project Software.; and/or (iv) confirming that Software has been destroyed in accordance with section B8(d) upon the expiration or termination of your associated license rights. You (or an authorized officer if you are a legal entity) will sign the reports to confirm their accuracy. QSS reserves the right to audit from time to time, upon fifteen (15) days prior written notice, your compliance with the Development Seat, Floating Development Seat and Project Software restrictions of this Agreement.

(f) Third Party Software. Parts of the Software may contain third party code. Such Software is sublicensed to you when permitted under the standard terms of this Agreement or 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 in the License Guide and are set out in the corresponding Third Party License Terms Guide ("TPLTG") published at http://www.qnx.com/legal/licensing/dev_license/eula/tpltg1_05d.html. Unless expressly provided otherwise, all third party code is provided to you solely for use in association with the Neutrino RTOS and, in the case of hardware-specific components, only for use in association with hardware from that manufacturer (e.g., any third party code in Epson printer drivers is restricted to use in association with Epson printers only).

(g) Reservations. All rights in the Software not expressly granted are reserved to QSS and its licensors. All Software is licensed on a Development-Seat or Floating-Development-Seat basis, except for Project Software. Project Software may be used on any Authorized Workstations within the licensed Single Project, Platform or Field of Use, but only to the extent and for so long as the Authorized Workstation is assigned thereto. Except as expressly provided herein, this Agreement does not authorize the sub-licensing, transfer or distribution of any part of the Software to any third party.

(h) Use Restrictions. Unless expressly permitted by this Agreement, by applicable law, or by QSS in writing, you agree not to:

- (1) 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;
- (2) use unauthorized License Keys;
- (3) 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
- (4) 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 death, personal injury, or severe physical or property damage is a foreseeable consequence of a Software failure (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.

(i) Trust, but verify. QSS strives to provide you with flexibility in use of its products. This includes allowing multiple installations of Development Seats for the same developer (see definition of "Workstation"), sharing of TDks and other Project software across multiple developers (see B2(a)(2)), re-assignment of Development Seats between developers (see B2(e)(i)) or even transferring Development Seats to third parties (see B9(b)). This requires a large amount of trust on the part of QSS. As an actor turned President once opined, "Trust, but verify". Activities by a small few licensees require that QSS verify the activities of all licensees. As such, you hereby acknowledge and agree to the following:

- (1) Most Software requires activation. The commercial license rights granted under this Agreement are limited to the first thirty (30) days after you first install the Software unless you supply information required to activate your licensed copy in the manner described during the setup sequence of the Software. You can activate the Software over the internet or by telephone.
- (2) In order to install and/or activate the Software certain machine-specific information is sent ("Machine Information") to QSS at the time of activation and/or periodically thereafter. This Machine Information may include but is not limited to software identification number, MAC address, UUID, IP address, identification numbers set by manufacturers of your hardware and/or identification numbers related to your host operating system. QSS does not collect any personally identifiable information during activation. QSS may collect Machine Information at any time and may use Machine Information for the purposes of verifying compliance with the terms of this Agreement and any other agreements between you and QSS relating to software provided by QSS.
- (3) QSS may audit your use and deployment of the Software for compliance with the terms of this Agreement.
- (4) QSS may require that you provide QSS with a written report to verify your compliance with the terms of this license. Such a report could include, but would not be limited to:
 - (i) for Development Seats the serial number of each Software product you have licensed, the MAC address or other unique identifier of each computer on which each Development Seat is installed and confirmation that each developer has the Software installed only on a Workstation (i.e. a maximum of three personal machines);

- (ii) For Project Software, details on the project(s) that are using the Software such that it can be determined whether you are adhering to the applicable Single Project, Platform or Field of Use provisions. The report will be signed by an individual authorized to bind you confirming the accuracy of the Report.
- (5) Audits will not occur and reports will not be requested more than once each year unless discrepancies are discovered or QSS presents reasonable independent evidence that you are not complying. Reasonable evidence would include that based on Machine Information collected. In the event that an audit or report reveals use of the Software by you outside the terms of this Agreement, you will reimburse QSS for all reasonable expenses related to such audit or report in addition to any other liabilities you may incur as a result of such non-compliance.

(j) Preservation of Rights.

- (1) Except as expressly authorized by QSS, you may not: (i) create Derivative Works of Software licensed under this Agreement in any manner that would cause the Software, in whole or in part, to become subject to any of the terms of Protective License (as defined below); or (ii) distribute the Software (or Derivative Works) licensed under this Agreement in any manner that would cause any Software component to become subject to the terms of a Protective License. A "Protective License" is any license that requires, as a condition of use, modification and/or distribution of software subject to the Protective License, that such software (including derivative works thereof) or other software combined and/or distributed with such software be: (A) disclosed or distributed in source code form; (B) licensed for the purpose of making derivative works; or (C) re-distributable at no charge.
- (2) 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 C.F.R. 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 International Corporation.

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 subject to any Feedback provided under subsection (b) below, you retain all right, title and interest in and to any Derivative Works and application software that you develop pursuant to this Agreement.

(b) Feedback. At your option, QSS would like to get suggestions, comments or other feedback about its products (i.e., regarding their utility, reliability, performance and your user experience, as well as any bug-fixes, features, functionality or enhancements you would like to see in future versions; collectively "Feedback"). You agree that all Feedback is and shall be given entirely voluntarily and, even if designated as confidential, will not create any confidentiality obligations for QSS. You agree not to provide any Feedback that is subject to any third party Intellectual Property rights. If you desire to license any of your Intellectual Property to QSS you will not provide the Intellectual Property rights to QSS as Feedback, but rather, we will discuss the necessity of entering into a separate agreement. In the absence of such an agreement, and in order to incorporate Feedback that you provide, QSS requires, and you hereby agree, to assign and waive all right, title and interest (if any) in and to any QSS-specific Improvements (as defined below), including any associated Intellectual Property and moral rights, to and on behalf of QSS. In this paragraph "QSS-specific Improvements" means any work-arounds, bug-fixes, features, functionality, enhancements or other suggested improvements to the Software or other QNX products 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"): (1) in Software Source Code, (2) in a document clearly marked "Confidential" (or equivalent), or (3) 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:

- (1) use Discloser's Confidential Information as necessary to achieve the Purpose for which it was disclosed, and
- (2) 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. 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's expense) necessary or desirable to defend, such claims. In this Section B5, "Infringement" means:

- (1) infringement of copyright;
- (2) misappropriation of trade secrets by QSS; or
- (3) infringement by the Type I Software of any patent, where such patent infringement: (i) is inevitable when reproducing or using the infringing Software alone or in conjunction with equipment that is essential for its use; and (ii) has not been disclaimed in the applicable License Guide (see Section B5(c) [Limited Patent License] below). 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.

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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 certain functionality and performance. 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 the 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 (both subject to separate agreements) to help developers identify and solve particular Software implementation issues.

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- (1) 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
- (2) terminate this Agreement pursuant to Section B8 [Term & Termination] and, upon confirmation that you have complied with Section B8(d) [Implication of Termination], QSS will provide a refund of any license fees that you paid to QSS pursuant to this Agreement for your Development Seat/Floating Development Seat and/or Project Software license (if any).

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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 it expires or is terminated in whole or in part under subsections (b) or (c) below.

(b) Time Limited Licenses. Subject to the provisions of section B2(c) [Continuing Time Limited Licenses], the term of any Subscription-based Software license will expire on the subscription anniversary date, if not renewed. The term of any Single Project, Platform or Field of Use Software license will expire when the licensed Single Project, Platform or Field of Use activity ceases. The term of any other time-limited license (i.e. including alliance, partner or similar licenses) will end on the expiry date indicated in the applicable License Certificate. The term of any Software evaluation or trial Software license will expire on the earlier of: (1) the end of the applicable evaluation / trial period, or (2) 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.

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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. The divisions and headings in this Agreement have been included for convenience only and will not affect its construction or interpretation. 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. If you have purchased a commercial license for a Board Support Package ("BSP") which contains a license header specifying a copyright notice in favour of QSS and that the code is licensed under the terms of the Eclipse Public License ("EPL"), then you have the choice of exercising the rights provided under the terms of this Agreement or the terms of the EPL.

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PART C - Supplementary / Alternative Software Terms.

C1 Supplementary Terms.

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