

Part B - Runtime License Terms

Document version 7

B1. Background & Definitions

B1.1 Background

- (a) **QSS Software & Development Cycle.** 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 Development Suite License Guide ("**License Guide**", as further defined below) for more details of what's included and how it's provided. You can also contact QSS for a hardcopy. Embedded system developers typically build Target Systems using the Neutrino RTOS and QNX Momentics development suites by:
- (i) 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
 - (ii) 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.
- (b) **Intended Scope of Agreement.**
- (i) This Agreement is intended to provide OEM with a framework within which OEM can distribute copies of certain runtime files as an integral part of OEM's Target System.
 - (ii) This Agreement does not provide any development rights, support services or engineering services, which are provided for in different agreements; contact QSS for details. This Agreement supplements and not supercedes such agreements.
 - (iii) This Agreement is also intended to cover situations where QNX 4 RTOS technology is specified as the Software in the Runtime Quotation. There is no License Guide for QNX 4 Runtime Components and all authorship attribution and like notices for same that QSS is obliged to provide to OEM are identified or referenced by QSS in the Documentation.

B1.2 General Definitions. In this Agreement:

- (a) "**Affiliate**" means a person or entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a party hereto (with "control" meaning ownership of more than fifty percent (50%) of the voting stock of the entity or, in the case of a non-corporate entity, an equivalent interest).
- (b) "**Agreement**" means any Runtime Quotation issued by QSS referencing these terms, this document entitled Part B Runtime License Terms and any terms expressly referenced by this Agreement;
- (c) "**Agreement Year**" means 12 months ending on an anniversary of the Effective Date;
- (d) "**Commercially Released**" means formally released, generally available, and fully supported by QSS. It does not include "experimental", "engineering", "beta", or "unsupported" components.
- (e) "**Derivative Work**" means any work made by or for OEM that is a revision, modification, translation, expansion, extension, collection, condensation or abridgement of any software provided by QSS in source code form pursuant to the QDL, as defined below. It does not include any Runtime Configuration, or combination thereof, provided by QSS in Object Code form.
- (f) "**Documentation**" means any developer documentation, read-me files and release notes that are provided in or for Commercially Released Software;
- (g) "**Effective Date**" means the date that OEM executes or electronically accepts this Agreement, as the case may be;
- (h) "**Error**" means when the Runtime Configuration does not behave the way the associated Documentation says it should and the problem can be reproduced using the Runtime Configuration on a Reference Target Platform. It does not include problems resulting from modifications to, or incorrect or improper use of, the Runtime Configuration.
- (i) "**License Guide**" means the applicable version of the QNX Momentics Development Suite License Guide published at <http://licensing.qnx.com/document-archive/>.
- (j) "**License Sticker**" means an original copy of a QSS issued and serialized document (in the form of a sticker, printed certificate, electronic authentication or otherwise) which authenticates the Software;
- (k) "**License Key**" means a unique serial number provided by QSS that allows an end user to access the Software;
- (l) "**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.
- (m) "**OEM**" means the entity, other than QSS, identified on a Runtime Quotation, who is the other party to this Agreement;
- (n) "**QDL**" means the version of QSS's standard developer license agreement that accompanies or is identified in the QNX development software used to create the Runtime Configuration (copies of which are published at <http://licensing.qnx.com/document-archive/>).

- (o) **"Runtime Kit"** means any Runtime Configuration that (i) is the QNX Neutrino RTOS x86 Runtime Kit or (ii) is provided by QSS as a self-installing distribution archive on CD consisting of one or more pre-built boot images and additional runtime modules.
- (p) **"QNX Software Systems"** or "QSS" means QNX Software Systems Co.
- (q) **"Reference Target Platform"** means, in respect of particular Commercially Released Runtime Components, 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.
- (r) **"Runtime Quotation"** means a formal pricing quote for the distribution of runtimes issued by QSS which includes a specific area for OEM to execute the document or which can be accepted electronically through a click-through mechanism or the like. It may also be referred to as "Part A";
- (s) **"Runtime Components"** means any software components in Object Code format 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 are also described in the QNX Neutrino Runtime Operating System Runtime Technologies section of the applicable License Guide. It does not include any software identified as experimental, beta or trial software.
- (t) **"Runtime Configuration"** or **"Software"** means any Commercially Released Runtime Components (or any subset thereof, which may be Target System specific) that make up the software modules indicated in the Runtime Quotation. It includes any Commercially Released Updates that correspond to the specified Runtime Components to the extent that OEM has been provided with or has subscribed to such Update rights. For section B2 and B3, it includes any of the following that correspond to the specified Runtime Components: deliverables provided to OEM pursuant to a QSS engineering services agreement that provides a license under a Runtime License Agreement; Object Code versions of any Derivative Works; any Solutions provided to OEM pursuant to a QNX Priority Support Plan subscription or pursuant to Section B4.4 (b) (Limited Warranty); and any QNX-specific Improvements (as defined in section B2.4 (b)). Unless otherwise indicated, each Runtime Configuration is specific for each Target System.
 - (i) **"Type I Software"** means any Commercially Released Runtime Components other than Type II or Type III Software. It typically includes QSS proprietary code and may include some third party proprietary and open source code elements.
 - (ii) **"Type II Software"** means any Commercially Released Runtime Components identified as "Type II" or "Collateral Code" in the applicable License Guide or Runtime Quotation. Type II Software may be licensed to OEM under alternative, or sublicensed to OEM under amended, license terms – as identified or referenced by QSS in the applicable QDL and/or associated License Guide. It may include third party proprietary and open source code elements.
 - (iii) **"Type III Software"** means any Commercially Released Runtime Components identified as "Type III" or "As Is Code" in the applicable License Guide or Runtime Quotation. Type III Software is licensed, or sublicensed to OEM strictly on an "as is" basis, and may be licensed to OEM under alternative, or sublicensed to OEM under amended, license terms – as identified or referenced by QSS in the applicable QDL and/or associated License Guide. It may include third party proprietary and open source code elements.
- (u) **"Solution"** means an explanation, workaround or patch that addresses an Error.
- (v) **"Target System"** means a product fitting the Target Description on the Runtime Quotation into which the Software has been wholly or partially integrated, and 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;
- (w) **"Target System EULA"** means the end user license agreement that is used to license the Runtime Configuration to Target System end users;
- (x) **"Update"** means a new Commercially Released version of a Runtime Component that provides error corrections, functional enhancements and/or performance improvements and that are included in Medial (6.x) or Minor (6.x.x) Software updates, as well as any intervening maintenance releases (including service packs and patches). Updates do not include Major Software updates (e.g., QNX 4 to QNX 6) or access to unlicensed products or technologies. Updates are deemed not to include any new feature that: (i) is offered by QSS only in a separate royalty bearing Runtime Component, or as an extra-cost option to a licensed Runtime Component, or (ii) was formerly offered by QSS in a separate royalty bearing Runtime Component, but that is now bundled into a single component that has a greater list price than the original Runtime Component that OEM wants to update.
 - (i) **"Patch Release"** means a new version of a Minor Software Update that provides Error corrections, and is identified by an alpha character element (6.x.xA).
- (y) Other capitalized terms defined in this Agreement will have their indicated meaning throughout this Agreement.

B2. License Rights

- B2.1 **License.** Subject to the terms and conditions of this Agreement, including those specific to third party software (see section B2.3 – Third Party Software) and those relating to Target System EULAs (see section B3.5), QSS hereby grants to OEM for the term of this Agreement a non-exclusive, personal and non-transferable limited license to:
- (a) reproduce, as an integral part of a Target System, one copy of the Software for each License Sticker that OEM has purchased from QSS or its local authorized QNX distributor for the purpose of manufacturing Target Systems. A separate License Sticker is required for each Target System created;
 - (b) reproduce, as part of the Target System software back-up media (if any) to be shipped with the Target System, a second copy of the Software for each License Sticker that OEM has purchased from QSS or its local authorized QNX distributor solely for use for Target System back-up purposes (i.e., not for productive use, such as in redundant systems); and
 - (c) distribute copies of the Software made under section B2.1(a-b) to end users as part of and only for use in association with corresponding Target Systems under the terms and conditions of a Target System EULA as contemplated by section B3.5(b), both: (1) directly; and (2) indirectly by authorizing third parties to resell Target Systems and associated License Stickers ("Distributors") provided that OEM shall at all times remain responsible to QSS for the full performance of any obligations, and compliance with any restrictions, required by this Agreement.
- B2.2 **Updates** OEM shall be entitled to update the Software in Target Systems, at no additional charge:
- (a) with Patch Releases, solely for the purpose of adopting and disseminating Error corrections for new and existing Target Systems; and

- (b) with Updates, solely for use in new Target Systems and provided that OEM has maintained a continuous subscription to QSS support services that entitle OEM to receive and use Updates for each active QNX development seat used for Target System development, integration testing, maintenance, support and enhancement.
- B2.3 **Third Party Software.** Parts of the Runtime Components may contain third party code. Type I Software is licensed (or sublicensed) to OEM under the standard terms of this Agreement and may include additional license terms. Type II Software and Type III Software may be licensed to OEM under amended or alternative terms. Those terms, and any Software authorship attribution and like notices that QSS is obliged to provide to OEM, are identified or referenced by QSS in the applicable QDL and/or associated License Guide. Unless expressly provided otherwise, all third party code is provided to OEM solely for use in association with the Neutrino RTOS.
- B2.4 **Ownership & Reservations.**
- (a) **All Rights Reserved.** All rights not expressly granted are reserved to QSS and its licensors. QSS and its licensors retain all right, title and interest in and to the Software, including all Intellectual Property therein. All copies, Solutions and Updates that are not separately licensed will be considered part of the Software for the purpose of this Agreement and shall remain the property of QSS and its suppliers.
- (b) **Feedback.** At OEM's option, QSS would like to get feedback about its Software - i.e., regarding its utility, reliability, performance, user acceptance, and any features or functionality that OEM would like to see in future versions. QSS would also like to hear about any problems that OEM has encountered. In order to incorporate suggested improvements, QSS requires and OEM hereby agrees 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 OEM provides to QSS.
- B2.5 **Valid Development License Required.** All license rights granted in this Agreement are contingent upon OEM having valid commercial development system license(s).
- B2.6 **Subcontractors** Provided that OEM (i) shall at all times remain responsible to QSS for the full performance of any obligations, and compliance with any restrictions, required by this Agreement, and (ii) has received prior written consent of QSS, OEM may sublicense only to the extent necessary any rights under sections B2.1 (a) and (b) to subcontractors who have been retained by OEM to manufacture Target Systems on OEM's behalf.

B3 General License Limitations & Requirements.

- B3.1 **Use Restrictions.** Unless expressly permitted by this Agreement, by applicable law, or by QSS in writing, OEM agrees not to:
- (a) alter, remove, or cover any trademark, logo, proprietary or licensing notice(s) in or on any part of the Software, including in any "about" box, "flash" / "splash" screen or documentation;
- (b) use unauthorised license keys;
- (c) decompile, disassemble, decrypt, extract 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 OEM's purposes only, but only if QSS has refused to provide the necessary information or assistance;
- (d) 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;
- (e) use any part of the Runtime Configuration for any use other than in the Target System (including for development purposes); or
- (f) update Target Systems with new Runtime Configuration versions or releases, except Updates that OEM is authorized to distribute hereunder.
- B3.2 **High Risk.** Unless QSS has provided its express written consent for each Runtime Component in the Runtime Configuration, the Software may not be, and OEM will ensure that it is not, used in any application in which the 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.
- B3.3 **U.S. Government Restricted Rights.** The Software is provided under this Agreement to non-DOD agencies of the US Government with Restricted Rights and the Documentation with Limited Rights as provided by subparagraph (c) of FAR 52.227-19 ("Commercial Computer Software-Restricted Rights", June 1987). The rights of DOD agencies of the U.S. Government in the Software, Documentation, and related technical data are governed by the restrictions set forth in the Technical Data Commercial Items clause at DFARS 252.227-7015 (Nov. 1995) and DFARS Subpart 227.72 ("Rights in Computer Software and Computer Software Documentation"). Contractor / manufacturer is QNX Software Systems Co.
- B3.4 **Distribution of Copies.** OEM will ensure that any update or back-up media copy of the Target System software that includes any part of the Runtime Configuration will: (i) only be made available to authorized distributors pursuant to section B2.1 and to licensed Target System end users; or (ii) have measures to ensure that such software will only work on licensed Target Systems.
- B3.5 **License Stickers & Target System EULA.**
- (a) **Authentication.** OEM must provide (and require its Distributors to provide) appropriate License Stickers to authorized end users of its Target System. If License Stickers are provided in the form of physical stickers, OEM will affix at least one sticker (i.e. one sticker per licensed node) to each Target System created pursuant to this Agreement and require that these stickers not be removed by Distributors. Each License Sticker authenticates a copy of the Software as having been created under this Agreement and authorizes

use of that copy in the Target System on one computer. A separate License Sticker is required for each Runtime Configuration on each Target System. License Stickers are specific to particular Software releases and Target Systems.

- (b) **Target System EULA.** All Target Systems must be distributed with a "Target System End User License Agreement" or "Target System EULA" governing the rights in the Software by the Target System end user. The text for the Target System EULA will be provided by QSS through http://www.qnx.com/legal/licensing/end_user.html or will be included with the Runtime Configuration in the form of a click-through agreement in the case of the Runtime Kit. OEM will ensure that the Target System EULA is presented to the end user in a manner that creates a valid, binding contract between QSS and the end user in the jurisdiction in which it is presented. OEM will ensure that the Target System EULA is appropriate to the intended vertical market and end user in the end user's jurisdiction. Without restricting the generality of the foregoing it is contemplated that the Target System EULA may be presented as a click-through, shrink-wrap or other standard form agreement. In some jurisdictions it may be necessary for the EULA to be signed by the End User to create a valid, binding contract.
- (c) **Restriction on License Rights.** OEM is not licensed to distribute the Software in any jurisdiction in which it does not meet the requirements of section B3.5(b).
- (d) **Changes to Target System EULA.** On written notice, including by email, QSS may change the substance or form of the Target System EULA, or manner in which the Target System EULA is presented by QSS. OEM will have 30 days to modify its practices under (b) to comply with such changes.

B3.6 **Marking.**

- (a) **Copyright.** To the extent that end user documentation is distributed with the Target System and/or the Target System itself bears a copyright notice, then OEM will ensure that such documentation and/or Target System contains a copyright notice for the Runtime Configuration in favor of QSS, either generically as a licensor or substantively as set out on the end user documentation that is distributed with the Target System: ("© 1982-2008, QNX Software Systems. All rights reserved.")
- (b) **QSS Trademarks.** OEM will eliminate screen display references to QSS trademarks in Derivative Works. Any display of QSS' or its licensors' trademarks, trade names, logos, or other words identifying the Software, Documentation, related services or QSS' or its licensors' businesses ("Trademarks") will be for information purposes only, will be marked with the symbol ™, and will clearly identify the owner of the Trademark displayed.

B3.7 **Preservation.** When sub-licensing to any agency, department or unit of any government or quasi-government authority OEM will take all actions and precautions consistent with applicable laws and regulations specifically governing licensing to such entities to preserve and protect all ownership and other rights of QSS and its licensors in the Software and Documentation.

B3.8 **Compliance with Laws.** OEM will comply with all applicable laws, rules and regulations and obtain all permits, licenses and authorizations or certificates that may be required in connection with its activities pursuant to this Agreement. This includes any laws, regulations, orders or other restrictions on the export of the Software from Canada and the USA that may be imposed from time to time by the Canadian or United States Governments. OEM will not import, export or re-export, directly or indirectly, the Software or information pertaining thereto to any country for which either such government or any agency thereof requires a license or governmental approval at the time of import, export or re-export without first obtaining such license or approval.

B3.9 **Support Issues**

- (a) **No Support.** Except for Updates to which OEM is entitled, if any, QSS has no obligation under this Agreement to provide maintenance, support, training or consulting services. Such services are available from QSS but are subject to separate agreements.
- (b) **OEM to Support Target Systems.** OEM alone will be responsible for all Target System development, manufacturing, reproduction, assembly, marketing, distribution, licensing, installation, training, maintenance, updating and support.

B4. **Payment Terms, Risk Allocation and Sundry Items.**

B4.1 **Payment & Record Keeping.**

- (a) **Prepayment & Pricing.** OEM will prepay QSS for all copies of Runtime Configurations to be created for each Target System ("Manufactured") under this Agreement. Each prepaid order must reference the Runtime Configuration number and specify the intended Target System ("Order"). QSS will provide one License Sticker to OEM for each pre-paid copy to authenticate licensed copies. The amount due for each Order for each Runtime Configuration will be calculated by multiplying the desired number of whole or partial copies thereof to be Manufactured by the then-effective Unit Price. The Unit Price for each Runtime Configuration will be determined by reference to the price in the Runtime Quotation that corresponds to the actual number of that Runtime Configuration Ordered in the then-current Order. For greater certainty, pricing is on a per Runtime Configuration per Target System basis and OEM cannot aggregate Orders across different Target Systems to achieve better pricing. If a price is not specified in a Runtime Quotation or a Runtime Quotation is altered by OEM without QSS' consent, then the price of each Runtime Configuration will be determined by QSS' then-current list price for all Software included in the Runtime Configuration.
- (b) **Payment Terms.** If QSS generates an invoice in association with an Order, then all amounts invoiced by QSS will be paid within 30 days from the date of QSS' invoice. All unpaid amounts on invoices will bear interest at a rate equal to fifteen percent (15%) per annum, compounded monthly, or the highest rate permitted by law, whichever is lower, of the outstanding payment from the date due until the date paid.
- (c) **Payment - General.** All payments made will be in the invoiced currency, without deduction of any kind, except as required by applicable laws (in which case OEM will obtain and provide to QSS evidence issued by the relevant authority acknowledging their receipt of the deducted amount). All fees are exclusive of taxes. OEM will be solely responsible for payment of all sales or equivalent tax consequences which may flow from the delivery of Software and the performance of services (if any) hereunder, and will pay all taxes (including sales, use, value-added and similar taxes) payable with respect to payments made by OEM to QSS under this Agreement, except for taxes based solely upon QSS' income and legally required withholding taxes (if any).
- (d) **Audits & Reports.** OEM will maintain for a period of 5 years after the end of the year to which they relate accurate records regarding all copying and distribution activities, and the payments due to QSS, pursuant to this Agreement.

- (i) Upon 15 days prior notice, QSS may have an independent auditor of its choice audit such records to verify royalty reports and/or review OEM's compliance with this Agreement during normal business hours ("Audit"); or
- (ii) QSS may require that OEM provide QSS with a written report of the number of copies of the Software created by Runtime Configuration and Target System ("Report"). The Report will be signed by an authorized officer of OEM confirming the accuracy of the Report.

Audits will not occur and Reports will not be requested more than once each year unless discrepancies are discovered indicating an underpayment of more than ten percent (10%) of the proper amount owed. Payment errors will be corrected immediately by an adjustment payment, which will include interest on the overdue amount in accordance with section B4.1 (b). OEM will also reimburse QSS for its reasonable out of pocket audit costs if the underpayment is more than 10% of the proper amount owed.

B4.2 **QSS IP Indemnity.**

- (a) **Indemnity.** QSS will defend OEM and its Affiliates against any Infringement claims, and indemnify and hold OEM and its Affiliates harmless from any Infringement damages finally awarded, in any third party action against OEM or its Affiliates based on the reproduction, use or distribution of Type I or Type II Software in accordance with the terms of this Agreement, provided that OEM gives 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 B4.2 "Infringement" means: (i) infringement of copyright by the Type I or Type II Software; (ii) misappropriation of trade secrets by QSS; or (iii) infringement by the Type I or Type II Software of any patent, where such patent infringement is inevitable when reproducing, using or distributing Core 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 OEM or its Affiliates.
- (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 OEM and its Affiliates the right to continue using the Type I or Type II Software; (ii) replace the Type I or Type II Software with non-infringing software of comparable function; (iii) modify the Type I or Type II Software to be non-infringing; or (iv) if none of the foregoing alternatives is reasonably available to QSS, terminate OEM's and its Affiliates' rights to the Software, but only to the extent necessary to avoid the Infringement. OEM will have the right to terminate all of its rights if OEM determines such partial termination renders OEM's or its Affiliates' remaining rights ineffective. Upon such full or partial termination, QSS will refund to OEM, pro-rata to the extent of such termination, the royalties paid by OEM that are associated with the terminated rights.
- (c) **Limited Patent License.** Certain Software products noted in the License Guide (including the Advanced Graphics TDK, Multi-Media Framework TDK, Web Browser Development TDK, Multimedia Filters & Codes, Input Methods / Internationalization, Image Handling libraries) provide software for implementing products or systems that may require additional patent license rights. QSS only licenses to OEM the intellectual property interests in such Software that it owns, patent license rights (if any) that it expressly identifies in the License Guide for such Software, and any third party copyright interests in these software products. It is OEM's responsibility to determine if it requires, and to obtain as necessary, any additional rights, from patent owners / consortia, before making, using or selling any infringing product or system that contains or uses such Software.
- (d) **Exclusive Remedy.** This Section B4.2 states OEM's and its Affiliates' exclusive remedy for infringement of intellectual property rights by the Software.

B4.3 OEM Indemnity. OEM will indemnify and hold QSS harmless from any damages finally awarded, and any costs and expenses (including reasonable attorney's fees) incurred, in any third-party action against QSS, its Affiliates, or their distributors or suppliers, based on bodily injury, property damage or any other injury, damage, or claim arising out of the distribution, use or inability to use the Target System, provided QSS promptly notifies OEM and gives complete information and reasonable assistance to OEM (at OEM's expense). This section B4.3 will not apply to any claims under section B4.2 that QSS is obliged to defend, or to other allegations that the Software or Documentation infringe third party rights, or to any final award of a court of competent jurisdiction based on a finding of gross negligence or willful misconduct of QSS.

B4.4 **Warranty Disclaimer & Limitation of Liability.**

- (a) **Background.** As indicated in section B1.1 (Background), the Neutrino RTOS software is a general-purpose modular realtime operating system. OEM will select a subset of its modules for use in a unique hardware and software environment to achieve its desired functionality. QSS offers Priority Support to help developers identify and solve their particular Software implementation issues. Ultimately, OEM may find that it cannot achieve its desired results. While QSS is committed to providing versatile and reliable product, it does not warrant that the Software can be made to function in accordance with associated user documentation, or other published specifications, in the case of every hardware platform and configuration of modules.

QSS tests Commercially Released Runtime Components on the Reference Target Platform. However, QSS cannot warrant that any Software will function in accordance with corresponding Documentation in every combination of hardware platform, software environment, and Software configuration. OEM acknowledges that software bugs are likely to be encountered when Software is used in OEM's particular application. OEM therefore accepts the responsibility of satisfying itself that the Software is suitable for OEM's intended use. This includes conducting rigorous testing of the Software in combination with OEM's value-added software application(s) on OEM's target hardware platform prior to its initial release, and prior to the release of any related software or hardware modifications or enhancements.

- (b) **Limited Warranty.** QSS warrants to OEM for a period of ninety (90) days from the Effective Date that:
 - (i) the Commercially Released Software as delivered by QSS is capable of performing the functions described in corresponding Documentation when used on a Reference Target Platform. OEM's sole remedy, and QSS' sole obligation, for any breach of this warranty will be, at QSS's option, to either:
 - (1) provide OEM with a free Solution for use as an interim fix until QSS provides OEM with a free Update that corrects the problem; or

- (2) terminate this Agreement in respect of the defective Software, in which case QSS will provide a refund of any associated fees paid to QSS pursuant to the corresponding invoice; and
- (ii) 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. OEM's sole remedy for any breach of this media warranty will be to receive replacement media.
- (c) Exclusion of Other Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SOFTWARE PRODUCTS AND SERVICES PROVIDED, IF ANY, UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR CONDITIONS OF 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.
- (d) Exclusion of Consequential Damages 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 OEM AND ITS REPRESENTATIVES, 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 ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (e) Limitation of Liability 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:
 - (i) FOR TYPE I SOFTWARE, THE TOTAL FEES OEM HAS PAID TO QSS UNDER THIS AGREEMENT IN THE 24 MONTHS PRECEDING THE CLAIM;
 - (ii) FOR TYPE II SOFTWARE AND FOR SERVICES (IF ANY) THE TOTAL FEES OEM HAS PAID TO QSS UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE CLAIM; AND
 - (iii) FOR TYPE III SOFTWARE OR ANY SOFTWARE THAT IS NOT COMMERCIALY RELEASED BY QSS, OR ANY OTHER CLAIM UNDER THIS AGREEMENT US\$10,000.
- (f) Survival. SECTIONS B4.4(c)-(e) SHALL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- (g) QSS Licensors. NEITHER QSS NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO CUSTOMER OR OTHER THIRD PARTIES, ANY WARRANTY OR REPRESENTATION ON BEHALF OF QSS'S LICENSORS.

B4.5 Term & Termination.

- (a) Execution. This Agreement may be executed by the parties by communicating to the other:
 - (i) in the case of OEM, a Runtime Quotation duly accepted by execution or by electronic acceptance by a click-through mechanism or the like;
 - (ii) in the case of QSS, a Runtime Quotation.
- (b) Term. This Agreement commences on the Effective Date and ends when terminated in accordance with this section B4.5.
- (c) Termination by OEM. Provided it is in compliance with the other terms of this Agreement, OEM may terminate this Agreement at any time upon 30 days' prior written notice.
- (d) Termination by QSS. QSS may terminate this Agreement without cause (i) up to such time as QSS fills the first order for License Stickers under this Agreement; and (ii) any time after five (5) years from the Effective Date upon 90 day's prior written notice.
- (e) Change to Agreement. Circumstances may dictate that QSS change the method that the Software is distributed to OEM and/or to end users. QSS may, upon 90 days written notice, change the terms of this Agreement that relate to such distribution other than terms relating to price. If OEM chooses not to accept these changes then QSS may terminate this Agreement upon a further 30 days written notice.
- (f) Immediate Termination. Either Party may terminate this agreement immediately upon providing notice if the other:
 - (i) breaches a material term of this Agreement that: (1) is incapable of cure, (2) could have been cured within thirty (30) days of notice, but was not, or (3) required more than thirty (30) days to cure but the defaulting Party, having received notice, has either failed to commence or diligently pursue the cure during such period;
 - (ii) files, or has filed against it: (1) a petition in bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy law; or (2) any dissolution or liquidation proceeding; and any such proceeding under (1) or (2) is not dismissed within sixty (60) days from filing; or
 - (iii) becomes insolvent or ceases to carry on business on a regular basis, and within thirty (30) days thereafter the defaulting Party (or some financially and technically responsible successor in interest acceptable to the aggrieved Party who assumes the defaulting Party's obligations) fails to resume doing business on a regular basis.
- (g) Implication of Termination.

- (i) *General.* 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 Sections B2.4 (Ownership & Reservations), B3.7 (Preservation), B3.8 (Compliance with Laws); and B4 (Payment Terms, Risk Allocation and Sundry Items). Termination is without prejudice to any right or remedy that may have accrued, or be accruing to either Party prior to termination. Termination will not relieve OEM from its obligation to pay QSS any and all fees or other amounts due under this Agreement at any time or for any period. Any pre-payment of Software royalties or license fees is non-refundable.
- (ii) *Surviving Licenses.* If either Party terminates this Agreement for any reason all Target System EULAs granted prior to termination in accordance with the terms of this Agreement will continue. All license rights of OEM and its Distributors will immediately cease upon termination.

B4.6 **General**

- (a) **Dispute Resolution.** In the event of any dispute arising from or regarding the subject matter of this Agreement, the Parties agree to negotiate in good faith an equitable resolution of the disputed matter. If the Parties are unable to resolve the dispute, they will escalate the matter to senior management within their respective organizations. If the dispute is not resolved within ten (10) business days then either Party may commence legal, equitable, or other proceedings upon providing the other Party a further ten (10) business days notice of such intent. Each Party waives its rights to a jury trial in any resulting litigation.
- (b) **Entire Agreement.** This Agreement, comprising a Part A - RunTime Quotation and this Part B - Runtime License Terms along with any terms expressly referenced by this Agreement, 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 a Runtime Quotation, 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 Confidential Source License Agreement, QNX Open Community License or QNX Community License referenced in the headers of any source code provided by QSS.
- (c) **Assignment.** You may not assign this Agreement, or assign any rights or delegate any obligations under this Agreement, without the prior written consent of QSS. An assignment will be deemed to include any merger of OEM with another party, whether or not OEM is the surviving entity, the acquisition of more than 50% of any class of OEM's voting stock by another party, or the sale of more than 50% of OEM's assets. Any 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.
- (d) **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 and the Parties irrevocably submit to the jurisdiction of the courts located in the Province of Ontario, Canada. The Parties expressly waive the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- (e) **Notice.** All notices must be in writing and delivered either in person or by means evidenced by a delivery receipt, to the attention of the title of the officer at the address specified at the end of a Runtime Quotation, with a copy to the Legal Department. Such notice will be effective upon receipt.
- (f) **Severance.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- (g) **Independent Parties.** The Parties are independent contractors. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement will be construed to create a partnership, joint venture, employment or agency relationship between QSS and OEM.
- (h) **Execution.** This Agreement may be executed in counterparts, each of which will be considered an original, but both of which together will constitute one and the same instrument. Any signature of this Agreement by one Party communicated to the other by facsimile will constitute execution of this Agreement.
- (i) **Interpretation.** The divisions and headings in this Agreement have been included for convenience only and will not affect its construction or interpretation.
- (j) **English Language.** The Parties have agreed that this Agreement be drawn-up in the English language. Furthermore, the Parties undertake never to contest the legality or validity of the present Agreement because of the fact that it has been drawn-up in the English language.
- (k) **Reference Account.** The parties each agree to act as a reference account for each other for activities relating to the Software and the Target System(s), 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.
- (l) **Preliminary Runtime Quotations.** QSS issues preliminary runtime quotations (which may be called "Runtime Opportunities") that are not formal Runtime Quotations. Any products quoted on preliminary runtime quotations are subject to availability.

B5 Additional / Alternate Terms for Specific Software.

This section B5 provides additional or alternate terms for specific Runtime Components. In the event of a conflict between the terms of this Part and other terms of this Agreement, the terms of this Part will prevail.

B5.1 Voyager Software.

- (a) Definition. "**Voyager Software**" means the Runtime Component identified in a Runtime Quotation by a description that includes the trademark "Voyager". Voyager Software is Type III Software.
- (b) Marking. OEM will not alter or delete any printed or on-screen copyright, trade secret or proprietary and/or legal notices contained in or on copies of the Voyager Software, and will ensure that: (i) it reproduces the copyright notices of the University of Illinois and Spyglass, Inc. on the "splash screen" or in the same location where OEM reproduces its own copyright notices; and (ii) it includes the following statements of identification and attribution in the Voyager Software by (1) inclusion on a "splash screen"; and/or (2) inclusion in an "about box"; and (3) in the associated documentation:

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OEM agrees to provide an example of such "splash screens", "about boxes" and other reproductions of all notices, copyrights, trademarks and logos prior to distribution of the Voyager Software for approval by QSS and its licensors the first time OEM reproduces such items and any time OEM substantially changes such items. No right is being granted hereunder for OEM to use trademarks of QSS, Spyglass, Inc. or their respective licensors.

B5.2 Citrix ICA.

- (a) Definition. "**ICA Client Software**" means the Runtime Component identified in a Runtime Quotation by a description which includes the trademarks "Citrix" and/or "ICA". The ICA Client Software is Type III Software.
- (b) International Distribution. OEM will not distribute the ICA Client Software or any related technical data to the People's Republic of China or Afghanistan.
- (c) Testing. OEM will exercise a level of quality assurance that is no less diligent with regard to media, replication and testing procedures, as that used by OEM for its own products, in connection with use and distribution of the ICA Client Software in the Target System.
- (d) Marking. Copyright and Patent Notices. OEM will not alter or remove any copyright, trademark and/or patent notices in the ICA Client Software. OEM agrees to comply with the following copyright and patent notice requirements: on initial load screen - "© 1998 Citrix Systems, Inc."
- (e) Term. Any rights in the ICA Client Software will be effective as of the Effective Date and will continue until (i) termination of this Agreement or (ii) expiration or termination of QSS's underlying license rights from Citrix, whichever occurs first. Except if this Agreement is terminated, rights in the ICA Client Software will be extended for any period that QSS negotiates with Citrix for continuation of the rights provided under this Agreement. Effective upon such termination or expiry of rights per 4.5(g)(ii), all license rights granted in the ICA Client Software will cease and OEM will cease to use all trademarks and trade names of Citrix. All end-user licenses properly granted by OEM will survive termination.
- (f) Third Party Beneficiary. OEM acknowledges and agrees that Citrix Systems, Inc. is a third party beneficiary in respect of all terms and conditions of this Agreement, including but not limited to those of this Section, as applied to the ICA Client Software.