

## HYPERVERSOR PARTNER SOFTWARE LICENSE AGREEMENT

The software and related documentation that you are about to access (the "Software", as further defined below) is offered by QNX Software Systems Limited ("QSS"), an Ontario corporation having offices at 1001 Farrar Road, Ottawa, Ontario, Canada K2K 0B3 (ph.: +1-613-591-0931, fax: +1-613-591-3579), to you (either as an individual or on behalf of the entity you represent, provided you are authorized to act on its behalf) for use in accordance with the terms and conditions below.

By answering "I ACCEPT" during the download, installation or activation of the Software, you represent that you have read, understand and agree to be bound by the terms and conditions of this Hypervisor Partner Software License Agreement including (as applicable) Schedule A (this "License"). If you do not accept these terms and conditions then you are not granted a license and are not authorized to download, install, activate, access or use any of the Software.

### TERMS AND CONDITIONS

#### 0. BACKGROUND.

QSS has developed certain hypervisor software product(s) ("Hypervisor Products") as more fully described in the QNX Hypervisor License Guide. The License Guide provides important version-specific information about the nature and scope of license rights granted (or not granted) to you hereunder. For that reason the License Guide should be carefully reviewed. Please contact [licensing@qnx.com](mailto:licensing@qnx.com) if you have any questions.

QSS licenses the Hypervisor Product under its QNX Hypervisor Commercial Software License Agreement ("HCSLA") for the commercial development of Target Systems using the Hypervisor Product components, including any related development tools ("Development Tools"). The HCSLA allows licensees to commercially develop Hypervisor Product-based works, on their own or with technical support or custom engineering assistance from QSS. This commercial license allows developers to charge fees for their Hypervisor Product-based products or services, provided that they obtain a distribution license from QSS for any Runtime Components they want to offer. If you are interested in obtaining commercial development license rights please contact an authorized QSS sales representative for more information.

QSS also makes the Hypervisor Product available to members of the QNX ecosystem under the terms and conditions of this QNX Hypervisor Partner Software License Agreement in order to provide easy access to QNX technology with the aim of increasing the pool of generally available technology for mutual customers and specifically to enable QNX Partners to obtain access to Development Tools as necessary to develop generally available products and/or services that are complementary to QNX technology. This is the "Spirit of this License". QSS is prepared to extend this QNX Hypervisor Partner Software License Agreement to you at a reduced cost, thereby providing many of the license rights normally only available to customers paying full price under the HCSLA, provided and so long as your activities fall within the Spirit of this License and the authorized purposes, as specified below. This License does not provide any support services or engineering services, which are provided for in different agreements; contact an authorized QNX sales representative for more information (see <http://www.qnx.com/company/contact/>). This License supplements and does not supersede such agreements.

#### 1. DEFINITIONS. In this License:

"Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls, 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).

"Commercially Released Software" means, for a particular version, unmodified Software components that QSS has:

- (a) identified in the License Guide and are not defined as Experimental Software; or
- (b) made generally available to you as an "official release" and
  - (i) are available to you on myQNX.com, Foundry27(TM) or any other developer portal hosted by QSS;
  - (ii) are made available to you for use under this License to address Errors pursuant to Section 14.4 (Remedy for Breach of Limited Warranty of Performance); or
  - (iii) to the extent specified in the applicable Documentation to be compatible with the balance of your Commercially Released Software components, are made available to you for use under this License during your subscription to: (1) maintenance and support services pursuant to Schedule A (Hypervisor Maintenance & Support Addendum), or (2) Custom Support.

It does not include any Experimental Software.

"Custom Support" means services provided by QSS under the terms of QSS's Custom Support Plan or other QSS enhanced support agreement(s).

"Damages" means any damages, losses or liabilities finally awarded by a court of competent jurisdiction or amount agreed to be paid in a written settlement agreement.

"Development License Certificate" means a certificate or record issued by QSS that is provided to you in hard copy or in electronic form (which includes by email) by QSS or by one of its authorized distributors, that:

- (a) contains a unique serial number,
- (b) identifies the part number(s) of the Hypervisor Product component(s) licensed to you for development purposes under this License,
- (c) identifies the term of this License, in the case of subscription licenses, and
- (d) contains one or more License Keys to unlock the licensed Software during installation.

Development License Certificates may include additional terms and conditions, which are hereby incorporated into this License by this reference, that are specific to its Hypervisor Product components.

"Documentation" means developer user manuals, operating instructions, installation guides, help files, in printed or electronic form generally made available to QSS's customers for use with the Software for development purposes (including but not limited to reference specifications - e.g. read-me files, installation notes, and release notes that are provided in or for the Software), the applicable License Guide(s), Third Party Terms List(s) and Development License Certificate(s).

"Experimental Software" means any Software that is:

- (a) experimental, alpha, beta, demo, trial, unsupported or other components made available to you by QSS for use under this License, whether:
  - (i) on an early access basis as described in Section 14.2 (Experimental Software),

- (ii) available from myQNX.com, Foundry27 or any other developer portal hosted by QSS and is not identified as an "official release",
  - (iii) set forth in the License Guide as 3<sup>rd</sup> Party Licensed Code that is provided for evaluation and/or demonstration purposes only (including without limitation 3<sup>rd</sup> Party Reference Applications), or
  - (iv) otherwise so identified and made available by QSS for use under this License;
- (b) a deliverable made available to you by QSS for use under this License pursuant to your subscription to: (1) maintenance and support services pursuant to Schedule A (Hypervisor Maintenance & Support Addendum), or (2) Custom Support that is not identified by QSS as an "official release";
  - (c) made available to you by QSS in Source Code form for use under this License (including but not limited to HTML, JavaScript, CSS, Shell script, Python or WebGL code) that has been modified by you or on your behalf; and
  - (d) used on hardware, or combinations of Commercially Released Software used with other software components (including but not limited to Software components from other versions or releases), that have not been documented by QSS to be compatible.

"Foundry27" means the QNX developer portal hosted by QSS at <http://community.qnx.com>.

"License Guide" means the applicable version of the QNX Hypervisor License Guide that is provided with the Commercially Released Software and is hereby incorporated into this License. It is also published at <http://licensing.qnx.com/document-archive/>.

"License Key" means a unique set of numbers, characters and/or symbols issued by QSS in a Development License Certificate or otherwise provided by QSS to unlock licensed components of the Software.

"myQNX.com" means the QNX user portal hosted by QSS at <http://www.myqnx.com>.

"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.

"Partner Product" means any hardware or software product that:

- (a) is not an end user product or software development tool (unless it's a QNX Tool plug in for QNX development);
- (b) runs on, interoperates with, or enables the Runtime Components;
- (c) is to be made generally available and actively marketed to mutual OEM customers to create embedded end user products; and
- (d) requires significant further development to create an embedded end user device.

"QSS and/or its Representatives" means any one or more of QSS, its Affiliates (including but not limited to BlackBerry Limited), or their respective directors, officers, employees, agents, suppliers or Contractors (as defined in Section 5.1 (c)).

"Runtime Component" means the code that is executable by a computer after processing or linking, but without compilation or assembly, of any component of the Software that is intended to be integrated into and distributed as an integral part of a Target System, as described in the License Guide or in

other Documentation. Unless expressly authorized by QSS in writing, it does not include any 3<sup>rd</sup> Party Licensed Code or any other demo or trial Software components.

"Software" means any computer code (in whatever form), and its associated interfaces and Documentation, included in any component of the Hypervisor Product(s) for which you have been issued a corresponding Development License Certificate by QSS or an authorized QNX distributor, for use under this License. It also includes:

- (a) patches, Updates and other deliverables made available to you by QSS for use under this License pursuant to Section 14.4 (Remedy for Breach of Limited Warranty of Performance) pursuant to your subscription to: (1) maintenance and support services pursuant to Schedule A (Hypervisor Maintenance & Support Addendum), or (2) or Custom Support; and
- (b) experimental, alpha, beta, demo (including 3<sup>rd</sup> Party Licensed Code), trial, unsupported or other components made available to you by QSS for use under this License (including at myQNX.com, Foundry27 or any other developer portal hosted by QSS).

"Source Code" means the human readable form of computer software code, including but not limited to any source code comments, design documentation, and corresponding header files, build scripts and make files. It includes without limitation HTML, JavaScript, Cascading Style Sheet ("CSS"), Shell script, Python and WebGL code.

"Standards" means any or all of the following:

- (a) any industry standard or recommendation, including de facto standards and recommendations, whether or not such standards or recommendations have been formally established or promulgated by any governmental or industrial standard setting forum or similar body, including, without limitation, any standards or recommendations of Car Connectivity Consortium, DLNA, ITU, IEEE (including without limitation, IEEE 802.11 local area network standards: IEEE 802.11a, 802.11b, 802.11g, 802.11n, 802.11ac and any future evolutions thereof), ETSI, ISO, MPEG, CSS, DVD, DivX, Dolby, AVC/H.264, ATM Forum, Frame Relay Forum, SMPTE, ATSE, GSM, IETF, etc.; and
- (b) the specifications for GSM/GPRS/EDGE (and if a device operates on any other network, the specifications for the corresponding standards for that network) adopted as a standard by ETSI, or 3GPP, 3GPP2, and/or any other relevant telecommunications standards body and any de facto standards imposed by a major operator of public subscription systems for in-country requirements (e.g. frequency spectrum availability, interconnection with pre-existing telephony networks, etc.).

"Target System" means any hardware or software product for embedded devices into which Runtime Components and Partner Products have been wholly or partially integrated that:

- (a) significantly enhances the function and value of the Software, and
- (b) has substantially different principal purposes than those of the Software, the Partner Products, and of other products of QSS.

"Third Party Terms List" means the applicable version of the Hypervisor Third Party License Terms List that is provided with the Commercially Released Software and is hereby incorporated into this License. It is also currently published at <http://licensing.qnx.com/document-archive/>.

"Update(s)" means new versions of Software components that are delivered by QSS pursuant to your subscription to: (1) maintenance and support services pursuant to Schedule A (Hypervisor Maintenance & Support Addendum), or (2) Custom Support or that are otherwise provided by QSS,

at its sole discretion, for use under this License. Unless or until an Update becomes Commercially Released Software it will be considered Experimental Software.

"you" means the individual who, or entity that, accepted and agreed to be bound by the terms and conditions of this License.

2. DEVELOPMENT LICENSE. Subject to the terms and conditions of this License, and to your payment when due of any applicable license fees (including but not limited to renewal fees for any applicable subscription-based licenses) specified on QSS's (or its authorized distributor's) invoice for the Hypervisor Product component development license(s) you have acquired ("Invoice"), which, if applicable, is hereby incorporated into this License), QSS hereby grants to you a limited, non-exclusive, personal, non-sublicensable, non-transferable (except as provided in Section 20 (Assignment)) and indivisible license for the specific activities and purposes authorized in Sections 3 (Authorized Activities) and 4 (Partner License) below:

- (a) under copyrights owned or sub-licensable by QSS, to reproduce the Software and to modify and/or supplement the Software made available to you by QSS in Source Code form (except for HTML, JavaScript, CSS, Shell script, Python and WebGL code that the License Guide or other Documentation expressly states is not to be modified); and
- (b) under patent claims owned or sub-licensable by QSS without QSS or any QSS Affiliate having to make any additional payment to any third party, and that are embodied in the Software as delivered by QSS, to make and use the Software and authorized derivative works of the Source Code.

Certain features of the Software may require additional patent or copyright license rights not included in this License, which include but are not limited to patent licenses relating to the implementation of Standards. For Commercially Released Software, these cases, other than patent licenses relating to the implementation of Standards, are noted in the License Guide. QSS only licenses to you the patent and copyright rights that it owns or that it can sub-license under the terms and conditions of this License without QSS or any QSS Affiliate having to make any additional payment to any third party. It is your responsibility to identify and secure any other license rights necessary to make, use, import or sell any product or system that contains or uses any Software that QSS has indicated may require additional patent or copyright rights (also see Section 16 (Third Party Licenses)).

Notwithstanding the foregoing, if any Software license granted to you has been previously terminated, then no license to use the Software is granted to you under this License. In such case you should contact [licensing@qnx.com](mailto:licensing@qnx.com).

3. AUTHORIZED ACTIVITIES. The Software is licensed only for the specific development activities below for purposes listed in Section 4 (Partner License):

- (a) installing the Software on, and following normal backup and archiving practices for, workstations to the extent and for so long as those workstations are used by you for the purpose of developing Partner Products ("Authorized Workstations"); and
- (b) using the Software on Authorized Workstations and in accordance with associated Documentation, for the purpose of developing, testing and maintaining Partner Products.

4. PARTNER LICENSE. Your approved Partner License application qualifies you to use the Software for the purposes expressly authorized below and within the Spirit of this License. QSS may require written confirmation of your ongoing qualifications to use this Partner License within ten (10) days of sending you notice. With a Partner License you may only use the Software for the purposes of:

- (a) developing, porting, evaluating, testing, maintaining and/or supporting Partner Products to run on, interoperate with or enable the Runtime Components;
- (b) porting, extending, optimizing, maintaining and/or supporting Software provided in Source Code form (except for HTML, JavaScript, CSS, Shell script, Python or WebGL code that the License Guide expressly states is not to be modified), and evaluating and testing the Runtime Components to run on, interoperate with or enable your Partner Products;
- (c) developing, modifying, optimizing, maintaining and/or supporting board support packages and device drivers to allow the Runtime Components to run on your hardware;
- (d) demonstrating and promoting to others the Runtime Components, and authorized derivative works of Runtime Components created pursuant to Sections 4(a), (b) and/or (c), with your Partner Products, provided that you do not leave copies with third parties. Partner Products may be provided to third parties for demonstration, evaluation and promotional purposes under a separate license agreement which may be obtained from QSS, if available for the applicable Runtime Configuration; and
- (e) using the Software to work with other authorized and licensed QNX Product Portfolio developers to facilitate teamwork in academic development labs or in group projects.

This includes determining the suitability of Runtime Components for use with Partner Products in Target Systems; conducting exploratory development or proof-of-concept prototyping of Partner Products and Target Systems; extending hardware or peripheral support for Runtime Components; developing new applications for or porting existing applications to the QNX Development Tools; and demonstrating and/or promoting your Partner Products to others, provided that you do not leave copies of the Software with third parties. It does not include your use of the Software in Target Systems, or in or with Partner Products, as an end user (Runtime Component licenses may be obtained from QSS or its authorized distributors, if available for the applicable Runtime Configuration).

With a Partner License you may not:

- (i) use the Software for the purpose of creating derivative works of Runtime Components with the intent to distribute your derivative works for a fee; or
- (ii) use the Software for the purpose of creating software, modifying or extending the Runtime Components or providing services if you do not intend to make such software or services generally available to members of the QNX community (e.g. partners, customers, etc.). **FOR GREATER CERTAINTY, YOU MAY NOT USE THE SOFTWARE UNDER THIS LICENSE IF YOU ARE FUNDED BY A THIRD PARTY TO USE THE SOFTWARE ONLY ON THEIR BEHALF;** or
- (iii) use the Software for the purposes set out in Sections 4(a), (b) and/or (c) if you are primarily responsible for creating or marketing a finished product which includes royalty bearing portions of the Software, or if you own or license more than 50% of the software to be used in such a product.

If there is any conflict between the purposes authorized under Sections 4(a) to 4(e) and those purposes excluded under Sections 4(i) to 4(iii) then it is not clear you are within the Spirit of this License. In such cases you are not licensed under this License unless otherwise expressly authorized by QSS in writing.

## 5. DEPLOYMENT OF SOFTWARE AND AUDITS OF SOFTWARE USE.

5.1 DEPLOYMENT OF SOFTWARE. You may deploy the Software for use in accordance with the terms and conditions of this License to:

- (a) your employees;
- (b) your Affiliates for use by their employees; and
- (c) your consultants, independent contractors, representatives or other agents ("Contractors"), and/or your Affiliates' Contractors, for use by their employees, but only to the extent and for so long as they provide software development services on your behalf (or on your Affiliates' behalf) in compliance with the terms and conditions of this License.

You may also re-deploy the Software (and associated Development License Certificates), from one developer to another, as developers and projects change. If a developer's Development License Certificate is re-deployed pursuant to this Section 5.1 (Deployment of Software), then thereafter the re-deployed Development License Certificate or any other Development License Certificate(s) you have licensed (or purchased) may not be re-deployed to the formerly-licensed developer for a period of six (6) months. See Section 20 (Assignment) for assigning this License.

5.2 RESPONSIBILITY. All acts or omissions of your Affiliates, Contractors and/or of any of your Affiliates' Contractors in relation to this License will be deemed to be your acts or omissions. You will always remain responsible to QSS for the full performance by your Affiliates and by any Contractors of the terms and conditions of this License, including but not limited to the limitation on the number of copies of Software installed and used.

5.3 LICENSED USER INFORMATION. In order to install and/or activate the Software, certain machine-specific information as well as personal information about the licensed developer ("Licensed User Information") is sent to QSS at the time of activation and/or periodically thereafter. Licensed User Information may include but is not limited to email address, username, software identification numbers, MAC addresses, UUIDs, IP addresses, identification numbers set by manufacturers of your hardware and/or identification numbers related to your host operating system. QSS may use Licensed User Information for the purposes of verifying compliance with the terms and conditions of this License, enforcing any reporting or audit-related provisions in this License (including but not limited to those in Sections 5.4 (Audits of Software Use) and 5.5), and verifying compliance with the terms and conditions of any other agreements between you and QSS relating to software provided by or on behalf of QSS, but QSS will otherwise treat any personal information elements of the Licensed User Information as your Confidential Information pursuant to Section 13 (Confidential Information).

5.4 AUDITS OF SOFTWARE USE. QSS may require from time to time, upon at least thirty (30) days' prior notice, that you provide a written report that includes without limitation:

- (a) the activities and for which the Software is being and/or has been used;
- (b) the physical and computer address(es) where the Software is and/or has been deployed;
- (c) certification that the components you have licensed, including any Updates, have been installed and used only in compliance with the terms and condition of this License; and
- (d) confirmation that Software copies have been destroyed in accordance with Section 17.3 (Implications of Termination) upon the expiration or termination of any of your license rights.

You (or an authorized signatory if you are a legal entity) agree to sign the reports to confirm their completeness and accuracy. QSS may also require you (or an authorized signatory if you are a legal entity) to complete and return a compliance certificate on an annual basis.

- 5.5 You will maintain accurate records regarding all activities relating to this License for a period of six (6) years after the end of the year to which they relate. QSS reserves the right to audit (or have an independent third party audit) your books and records, upon at least twenty (20) days' prior notice and at its expense, to determine your compliance with the terms and conditions of this License, including but not limited to the information called for in Section 5.4. The audit will be conducted under the confidentiality provisions of Section 13 (Confidential Information).
- 5.6 Audits will not occur and reports will not be requested more than once each calendar year unless discrepancies are discovered or unless QSS presents reasonable evidence (including but not limited to evidence based on Licensed User Information or based on the response or a non-response to the requirements set forth under Section 5.4 (Audits of Software Use)) that you are not complying with the terms and conditions of this License. If an audit or report reveals use of the Software by you outside the terms and conditions of this License, you agree to correct any payment errors immediately by providing an adjustment payment, which will include interest on the overdue amount 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. You will also reimburse QSS for all reasonable costs and expenses related to such audit or report, in addition to any other liabilities you may incur as a result of such non-compliance.

6. PROHIBITED ACTIVITIES. You will not, and will not assist, permit or enable any other party to:

- (a) decompile, disassemble, decrypt, extract, unbundle, translate, or otherwise attempt or assist others to reverse engineer any part of the Software except as permitted by an open source license applying to a specific part of the Software, or except to the extent that QSS is expressly precluded by law from prohibiting these activities. Except for published Source Code files that are expressly identified by QSS as open source software, the Software IS NOT OPEN SOURCE. To the extent permitted by applicable open source license(s), any License Guide/Third Party Terms List or other references identifying applicable open source license terms for the Software apply only to the original open source code used by or for QSS or its licensors and not to any pre-existing code modified using or combined with such open source code, or any new interests in derivative works created from such open source code;
- (b) alter, remove, or cover any trademark, logo, proprietary or licensing notices, labels, or marks in or on any part of the Software. You agree to exercise reasonable efforts to ensure that all whole or partial copies of the Software bear the same notices, labels, and marks contained in or on the original Software;
- (c) allow shared use of Development License Certificates or License Keys (except as expressly allowed in Section 5.1 (Deployment of Software));
- (d) disclose or distribute to any others Development License Certificates, License Keys (except as expressly permitted in this License) or myQNX.com account passwords, use unauthorized Development License Certificates, License Keys or myQNX.com account passwords, or circumvent the key activation or key management mechanisms if contained in the Software, at Foundry27 or at the myQNX.com site. You agree to treat Development License Certificates and all associated License Keys and passwords as QSS Confidential Information pursuant to Section 13 (Confidential Information);
- (e) directly or indirectly export, import, use, transfer or re-export the Software, except in compliance with the applicable laws and regulations of the relevant government authorities. You understand that the import or export of the Software may be regulated by some governments. You hereby



represent that: (i) to the best of your knowledge you are eligible to receive the Software under applicable law; (ii) you will not use the Software in the development, production, handling, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or their missile delivery systems, or of materials or equipment that could be used in such weapons or their missile delivery systems, or resell or export to anyone or any entity involved in such activity; and (iii) you will ensure that authorized users use the Software in accordance with the foregoing restrictions. You acknowledge that any export classification in respect of the Software made by QSS shall not be construed as a representation or warranty regarding the proper export classification for the Software or whether an export license or other documentation is required for your exportation of the Software. You accept sole responsibility to ensure that your export, import and use of the Software comply with all applicable laws;

- (f) use the Software in any application in which death, serious personal injury, or severe physical, environmental or property damage is a foreseeable consequence of Software use or failure ("High-Risk Applications"), including but not limited to in the monitoring, operation or control of nuclear facilities, mass transit systems, aircraft navigation, flight control or communications systems, air traffic control systems, weapon systems, and life-support machines. QSS EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF FITNESS FOR HIGH-RISK APPLICATIONS; or
- (g) use the Software to pursue any formal qualification, certification, or designation for the Software unless it is for a specific end user device or unless QSS has provided its express written consent.

7. PRESERVATION OF RIGHTS. You agree not to directly or indirectly grant, or purport to grant, to any third party any rights or immunities under QSS's or its licensors' intellectual property rights in the Software that would subject such intellectual property to an open source license or scheme in which there is or could be interpreted to be a requirement that as a condition of use, modification and/or distribution, the Software be:

- (a) disclosed or distributed in Source Code form,
- (b) licensed for the purpose of making derivative works, or
- (c) redistributable at no charge.

8. THIRD PARTY RESTRICTIONS. Components of the Software may contain elements of third party software that are licensed to QSS (and are therefore provided to you) for limited purposes and under terms and conditions that differ from those of this License. Such licenses include but are not limited to:

- (a) the Eclipse Public License ("EPL"), GNU Public License ("GPL"), Lesser GNU Public License ("LGPL"), Mozilla Public License ("MPL"), and/or other open source licenses;
- (b) third party licenses that impose restrictions on use, copying, authorized purposes, etc. and/or supplemental obligations. Examples of affected products include but are not limited to: board support packages or individual device drivers that are limited to use with specific hardware manufacturers' products; and/or
- (c) third party licenses that impose restrictions that limit use of the Software for a limited time and/or to use solely for demonstration and internal evaluation/trial purposes.

Those third party license terms, and notices that those third party licensors require to be provided, are set out for:

- (i) Commercially Released Software in the License Guide and/or the corresponding Third Party Terms List, and
- (ii) Experimental Software at the applicable download site, in or with the agreement or authorization it was provided under, or in the corresponding Source Code (e.g., see 3<sup>rd</sup> Party Licensed Code).

You are solely responsible for ensuring that limited-use software is not used outside of the limits stated.

Updated License Guides and Third Party Terms Lists may be issued for each new version of the Software. You are responsible for reviewing and complying with such new documents if you chose to adopt the associated new version. If you cannot accept the new documents then you are not authorized to use the new version of the Software. License Guides and/or corresponding Third Party Terms Lists may also be updated from time to time to correct oversights or errors. Please check <http://licensing.qnx.com/document-archive/> to ensure that you have the most up-to-date information. You are also responsible for reviewing any available Source Code, corresponding Documentation and download site notices for Experimental Software for any supplementary terms and conditions or other third party licensing considerations that apply. You acknowledge and agree that QSS can disclose to its third party licensors that you have received a copy of their technology.

**9. OWNERSHIP AND RESERVATION OF RIGHTS.** The Software is protected by intellectual property laws including but not limited to copyright laws, both locally and internationally. The Software is not sold but is licensed to you on the terms and conditions set forth in this License. QSS and its licensors retain all rights, title and interests in and to the Software (including but not limited to any elements of the Software embodied in derivative works you create, and any elements of the Software that are derivative works created by or for QSS or its licensors from or using open source software) and reserve all rights in the Software not expressly licensed by this License, including but not limited to copyrights, patent rights and rights in Confidential Information. Subject to all underlying rights of QSS and its licensors in the Software, and to the terms and conditions of this License, all other rights, title and interests in and to any authorized derivative works of the Software and other software that you may independently develop pursuant to this License will be retained by you. No trademarks or service marks of QSS or its licensors are licensed by this License, and you understand and agree that QSS trademarks or service marks may not be applied to your goods or services without the express written permission of QSS.

**10. FEEDBACK.** QSS welcomes suggestions, comments or other feedback about its products and services (e.g., regarding their utility, reliability, or performance) and your user experience with the Software, as well as any bug-fixes, features, functionality or enhancements you would like to see in future versions ("Feedback"). You agree that all Feedback is and will be given entirely voluntarily and, even if designated as confidential, will not create any confidentiality obligations for QSS. You represent and warrant that you will not provide any Feedback that you know or have reason to believe might infringe any third party intellectual property rights or misappropriate any third party confidential information or trade secrets. Except as expressly stated above, any Feedback you provide will be considered to be provided "as is" without any warranty or condition of any kind, whether express or implied. If you require QSS to enter into an intellectual property license to use any Feedback then, either at the time of providing your Feedback or within ten (10) business days thereafter, you will notify the person to whom you are providing the Feedback and will provide notice to QSS's licensing group at [licensing@qnx.com](mailto:licensing@qnx.com). In the absence of such notification you hereby grant to QSS a worldwide, non-exclusive, perpetual, irrevocable, directly and indirectly sub-licensable, paid up and royalty free right and license to exploit the Feedback in any manner and for any purpose including without limitation to make (or have made), develop (or have developed), modify (or have modified), reproduce (or have reproduced), use (or have used), import or export (or have imported or exported), offer for sale or sell (or have offered for sale or have sold), license (or authorize others to license), and distribute or otherwise dispose of (directly and indirectly) as part of any of QSS's or its Affiliates' business, technology, products or services, and to grant others the right to do any of the foregoing.

11. U.S. GOVERNMENT RIGHTS. Notwithstanding any agreement with a third party or any provision of law, regulation or policy, if you are an agency of the government of the United States of America, then your rights in respect of the Software shall not exceed the rights provided under this License, unless expressly agreed upon by QSS in a written agreement between you and QSS and signed by a signing officer of QSS.

12. SUPPORT. Support services from QSS are available at extra cost as further described in Section A-3 (Services) of Schedule A (Hypervisor Maintenance & Support Addendum) or pursuant to Custom Support. Contact an authorized QNX sales representative for more information (<http://www.qnx.com/company/contact/>).

### 13. CONFIDENTIAL INFORMATION.

#### 13.1 In this License:

"Confidential Information" means any information in any form or medium:

- (a) that is proprietary or confidential to the disclosing party ("Discloser"), its Affiliates, or to their respective customers, suppliers or other business partners, including without limitation information that is embedded in or related to Discloser's products or services, or to the development, testing or commercial exploitation thereof;
- (b) that is either specifically identified as confidential prior to or at the time of its disclosure, or would generally be considered confidential in the embedded software industry; and
- (c) that is directly or indirectly disclosed to the receiving party ("Recipient") by or on behalf of Discloser, or to which Recipient is otherwise provided access by Discloser or on Discloser's behalf.

QSS Confidential Information includes without limitation:

- (i) Software Source Code;
- (ii) Experimental Software, in any form, that has been made available to you at a password restricted site, including but not limited to the myQNX.com download center and password protected parts of Foundry 27;
- (iii) myQNX.com and Foundry27 user account information, access ID's and passwords;
- (iv) Development License Certificates and License Keys; and
- (v) any benchmarking information for Experimental Software generated by or for you.

"Trade Secret(s)" means Confidential Information that is proprietary technology information (including but not limited to Source Code, algorithms, formulae, methods and processes), the disclosure of which to unauthorized third parties could cause Discloser to suffer a significant loss of competitive and/or commercial advantage in its markets.

13.2 DISCLOSURE, USE AND REPRODUCTION. Except as specifically provided herein, Recipient will hold all Confidential Information in confidence in accordance with the terms of this License. Recipient shall use and reproduce Confidential Information only to the extent reasonably required to fulfill the purpose of this License. Recipient may provide access to Confidential Information to, and authorize the use and reproduction of Confidential Information by, Recipient's employees, Recipient's Affiliates for use by their employees, and Recipient's Contractors or Recipient's

Affiliates' Contractors for use by their employees, but in each case only as reasonably required to fulfill the purpose of this License, and provided that:

- (a) all such persons have a need to know the Confidential Information and have entered into confidentiality agreements with terms and conditions that afford no less protection to the Confidential Information than the terms and conditions of this License; and
- (b) all acts or omissions of such persons will be deemed to be Recipient's acts or omissions.

Recipient will always remain responsible to Discloser for the full performance of the terms and conditions of this Section 13 (Confidential Information) by all persons to whom Recipient directly or indirectly discloses Discloser's Confidential Information.

13.3 OTHER DISCLOSURES. In addition to the disclosure rights in Section 13.2 (Disclosure, Use and Reproduction), Recipient may disclose Confidential Information if and only to the extent:

- (a) it is required to do so by law, provided Recipient gives Discloser sufficient notice to enable it to seek an order limiting or precluding such disclosure, or
- (b) an authorized signatory of Discloser provides Discloser's explicit prior written authorization.

13.4 STANDARD OF CARE. Recipient shall use a reasonable degree of care to prevent the unauthorized use, reproduction or disclosure of Confidential Information, which care shall not be less than the degree of care that Recipient uses to protect its own Confidential Information of a similar nature.

13.5 SECURITY FOR SOURCE CODE. You must store any copies of Software Source Code on computers and/or networks that are secured by controls employed by you for materials reasonably considered to be Trade Secrets or otherwise highly confidential.

13.6 EXCLUSIONS. Information that Recipient can establish:

- (a) is presently known or becomes known to Recipient or its authorized disclosees from an independent source without obligations of confidence,
- (b) is in or enters the public domain after the date of initial disclosure to Recipient through no fault or act of Recipient or its Affiliates, or their Contractors,
- (c) was independently developed by or on behalf of Recipient or its authorized disclosees, or
- (d) is Feedback provided pursuant to Section 10 (Feedback),

shall not be considered Confidential Information under this License.

13.7 CONFIDENTIALITY PERIOD. Recipient's duties with respect to Confidential Information under this License will expire five (5) years after the end of this License (except for Trade Secrets, which shall remain subject to the terms of this License for so long as they constitute Trade Secrets).

13.8 RETURN OF CONFIDENTIAL INFORMATION. Upon termination of this License, and upon Discloser's written request, Recipient shall promptly return all Confidential Information received from Discloser (including without limitation all copies thereof and any summaries of orally disclosed information in Recipient's or its authorized disclosees' possession or control) or will certify through an authorized signatory of Recipient that all such Confidential Information has been destroyed. Failure of the Discloser to make such request shall not entitle Recipient to make any further use of Confidential Information, or otherwise extend Recipient's rights after termination of this License, and Recipient specifically agrees to cease any further use of Discloser's Confidential Information.

Any electronic copies made as part of Recipient's standard backup and archival practices shall be excluded from the obligations of this Section; however, this License shall continue to apply to such Confidential Information, including but not limited to any restored copies thereof. The provisions of this Section shall survive termination of this License for any reason. 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 License.

13.9 REMEDIES. Recipient acknowledges and agrees that:

- (a) the Confidential Information has been developed at significant cost and has important commercial value to Discloser, its Affiliates or to their respective customers, suppliers or other business partners;
- (b) knowledge of all or any part of the Confidential Information may constitute insider information under securities laws or yield a competitive advantage over others not having such knowledge; and
- (c) disclosure or inappropriate use of Confidential Information could cause Discloser irreparable harm and that therefore Discloser will have the right to seek, in addition to any of its other rights and remedies, injunctive relief for any violation of this License without posting bond, or by posting bond at the lowest amount required by law.

13.10 RESIDUALS. Nothing in this License will be interpreted as precluding any representative of either of the parties or its Affiliates from making use of his/her general knowledge and skills in connection with other projects being performed on behalf of his/her employer, even if such general knowledge and skills have been furthered by his/her having access to the Confidential Information exchanged under this License. The confidentiality obligations of this License will not apply to Residual Information, where "Residual Information" means general technical, non-public knowledge, experience, know-how or information in a non-tangible form that is retained in the unaided memories of representatives, to whom Confidential Information is disclosed under this License, where such individuals are not consciously aware that the information forms part of the Confidential Information. A representative's memory will be considered to be unaided if they have not intentionally memorized Confidential Information for the purpose of retaining and subsequently using or disclosing it. The parties each acknowledge and agree that this Residual Information exception is intended only to alleviate the possibility of inadvertent breach of the obligations of this Section 13 (Confidential Information).

14. LIMITED WARRANTIES AND INDEMNITY.

14.1 BACKGROUND. The Runtime Components comprise parts of a general hypervisor product that is provided for use in a variety of vertical markets, on a range of hardware platforms and for a diverse set of Target Systems. You will select a subset of these parts for use in your unique hardware and software environment to implement certain desired functionality and performance characteristics. 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 its Documentation in every combination of hardware platform, software environment and software configuration. You acknowledge that errors are likely to be encountered when the Software is used in your particular application. You therefore accept responsibility for satisfying yourself that the Software is suitable for your intended use. This includes conducting rigorous testing of the Software, in combination with your derivative works and value-added software application(s), on your target hardware platform. It also includes thorough hazard and risk analysis and risk mitigation at the system level to determine whether faults could impact the functional safety of your Partner Product or any Target System in which it may be used. The system design, system validation and the decision to release Partner Products are all matters solely within

your control. These are decisions that can fundamentally impact the functional safety of the system being deployed, over its entire life cycle. QSS offers Custom Support under separate agreements, to help developers identify and solve particular Software implementation and integration issues.

- 14.2 **EXPERIMENTAL SOFTWARE.** QSS makes Experimental Software available to you primarily at the Foundry27 web site, although other delivery mechanisms may be used from time to time. The myQNX.com download center is QSS's primary on-line source for Commercially Released Software updates, although some exceptions may apply.

For example, projects on Foundry27 may post experimental, alpha and beta builds for components that may be included in upcoming commercial releases; whereas, Software updates that include the commercially released versions of such components may be made available from the myQNX.com download center. Experimental Software from QSS, including but not limited to unsupported board support packages, drivers and sample Source Code, as well as trial tool and runtime components, are usually made available on Foundry27. If third party distribution restrictions prohibit Foundry27 postings, then QSS may have to offer certain Experimental Software as myQNX.com downloads.

You acknowledge that you must always review any available Source Code, corresponding Documentation (including but not limited to new License Guides, Third Party Terms Lists and release notes) and download site notices to confirm the release status and any supplementary terms and conditions or other third party licensing considerations relating to Foundry27 and myQNX.com downloads (see Section 8 (Third Party Restrictions)).

QSS offers access to experimental, alpha and beta builds in order to give the QNX developer community the earliest possible access to the latest Hypervisor Product(s) technology and bug-fixes. Other Experimental Software is offered as a means of accelerating your development by leveraging additional source or binary code. The form and nature of Experimental Software may change without prior notice to you and future versions of Experimental Software may be incompatible with developments on previous versions.

You acknowledge that QSS may stop (permanently or temporarily) providing the Experimental Software (or any features within the Experimental Software) to you at QSS's sole discretion, without prior notice. You should also be aware that significant changes, such as changes to or elimination of functionality or APIs, may be made to subsequent releases.

Many developers will migrate during their development cycle from QSS's Experimental Software to corresponding Commercially Released Software as it becomes available. Others may decide to ship Experimental Software after thoroughly testing the stability of such code and/or assessing the maturity of any milestone builds.

**EXPERIMENTAL SOFTWARE MAY HAVE KNOWN DEFICIENCIES, MAY NOT HAVE BEEN FULLY OPTIMIZED AND TESTED, MAY NOT BE FULLY SUPPORTED BY QSS AND MAY BE UNRELIABLE. EXPERIMENTAL SOFTWARE IS MADE AVAILABLE TO YOU STRICTLY ON AN "AS IS" BASIS, WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND. IN NO EVENT WILL QSS AND/OR ITS REPRESENTATIVES BE LIABLE UNDER ANY CAUSE OF ACTION WHATSOEVER FOR DAMAGES RESULTING FROM THE USE OF OR INABILITY TO USE ANY EXPERIMENTAL SOFTWARE.**

- 14.3 **LIMITED WARRANTY OF PERFORMANCE.** QSS warrants to you for a period of ninety (90) days from the Effective Date, that the Commercially Released Software licensed to you under this License, that is identified as Type I Software and qualifies for "Full" support in the applicable "Support Provided" column in the License Guide, will be free of Errors. An "Error" means when the Software, when used in accordance with the associated Documentation on one or more of the applicable "Reference Platforms" identified in the License Guide, fails to materially behave the way the Documentation says it should. Software will be presumed to be free of Errors unless the error

or problem can be reproduced on a Reference Platform and the error or problem does not result from modifications to, or incorrect or improper use of, the Software.

14.4 REMEDY FOR BREACH OF LIMITED WARRANTY OF PERFORMANCE. Your sole remedy and QSS's sole obligation for any breach of the warranty of Section 14.3 (Limited Warranty of Performance) will be, at QSS's option, either to:

- (a) provide you with a free explanation, workaround or Update that allows the Software to be used free of Errors; or
- (b) terminate this License pursuant to Section 17 (Term, Subscription Renewal & Termination) and, upon confirmation that you have complied with your obligations under this License, to provide you with a refund of any license fees that you paid to QSS or its authorized distributor pursuant to this License.

14.5 MEDIA WARRANTY AND REMEDY. QSS warrants to you for a period of ninety (90) days from the Effective Date, that any tangible media that QSS used to deliver the Software will be free from defects in material and workmanship under normal use. QSS is not responsible for media defects that result from accident or abuse. Your sole remedy for any breach of this media warranty will be to receive replacement media.

14.6 INDEMNITY AND EXCLUSIONS. Subject to the limitations of Section 15 (Limitation of Liability), if a claim is brought against you for Damages caused by the infringement of any third party copyrights or patents, or the misappropriation of trade secrets, arising out of your use or distribution of Commercially Released Software under the terms and conditions of this License (any one or more, "Infringement Claims") then QSS agrees to defend you against such Infringement Claims, and to indemnify and hold you harmless from resulting Damages and reasonable costs and expenses incurred (including but not limited to reasonable lawyers' fees and disbursements), provided that you:

- (a) promptly notify QSS in writing of such Infringement Claims,
- (b) provide QSS with sole control of the defense and/or settlement thereof,
- (c) furnish to QSS on request all relevant information in your possession or control for such defense,
- (d) cooperate with and provide such assistance, at QSS's expense, in the defense of such Infringement Claims as reasonably requested by QSS, and
- (e) do not admit any such Infringement Claims and/or make any payments with respect to any such Infringement Claims without QSS's prior written consent.

Expressly excluded from this indemnity are any assertions of:

- (i) copyright infringement or trade secret misappropriation based upon the use, reproduction, performance or distribution of any components of: (1) Experimental Software, (2) Software identified in the License Guide, or otherwise by QSS in the course of making the Software available to you, as Type III, or (3) Software that have been modified, supplemented or combined with other software, hardware or systems, where the Software on its own would not infringe; and
- (ii) patent infringement based upon the making, using, importing or selling of any components of:
  - (1) Experimental Software,

- (2) Software that have been identified in the License Guide, or otherwise by QSS in the course of making the Software available to you, as Type II or Type III,
- (3) Software that have been identified in the License Guide, or otherwise by QSS in the course of making the Software available to you, as requiring additional patent rights not included in this License,
- (4) Software that have been modified, supplemented, or combined with other software, hardware or systems, where the Software on its own would not infringe, or
- (5) Software that infringe any Essential Patent.

In this Section "Essential Patent" means any patent or patent application which is necessarily infringed in order to use, make, sell, export, import or otherwise distribute a product, apparatus, software or other item that complies with a Standard, which patent or patent application would not have been infringed but for the compliance with such Standard, where, for the purpose of this Section, a patent or patent application is necessarily infringed because it is not commercially reasonable to implement a standard without infringing a claim of such patent or patent application because of the lack of a commercially reasonable non-infringing implementation.

14.7 REMEDIES FOR INDEMNIFIED CLAIMS. If QSS reasonably believes that one or more of the indemnified acts in Section 14.6 (Indemnity and Exclusions) have occurred or may occur, QSS will, at its sole expense (subject to the limitations of Section 15 (Limitation of Liability)), and option:

- (a) procure for you the right to continue using the infringing Software;
- (b) replace the infringing Software with non-infringing software of comparable function;
- (c) modify the infringing Software to be non-infringing; or
- (d) if none of the foregoing alternatives is available to QSS on commercially reasonable terms, terminate your right to the Software, but only to the extent necessary to avoid or mitigate Damages. You will have the right to terminate all of your rights if you determine, in your commercially reasonable judgment, that such partial termination renders your remaining rights ineffective. Subject to the limitations of Section 15 (Limitation of Liability), upon such full or partial termination, QSS will refund to you, pro-rata to the extent of such termination, the fees paid by you, if any, pursuant to this License that are associated with the terminated rights.

SECTION 14.6 (INDEMNITY AND EXCLUSIONS) AND THIS SECTION 14.7 (REMEDIES FOR INDEMNIFIED CLAIMS) STATE YOUR EXCLUSIVE REMEDIES FOR INFRINGEMENT AND/OR MISAPPROPRIATION BY THE SOFTWARE.

14.8 NO OTHER WARRANTIES.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 14 (LIMITED WARRANTIES AND INDEMNITY), AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE LICENSED AND ANY SERVICES OR HARDWARE PROVIDED UNDER THIS HYPERVISOR PARTNER SOFTWARE LICENSE AGREEMENT ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, REPRESENTATIONS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. SUBJECT TO THE LIMITED WARRANTY IN SECTION 14.3 (LIMITED WARRANTY OF PERFORMANCE), QSS DOES NOT WARRANT, AND NOTHING IN THIS LICENSE IMPLIES ANY WARRANTY, THAT THE OPERATION OF THE SOFTWARE AND/OR HARDWARE, OR ACCESS TO SERVICES, WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY ERRORS FOUND WILL BE CORRECTED.



14.9 SURVIVAL. This Section 14 (Limited Warranties and Indemnity) will survive the termination of this License for any reason and will apply notwithstanding the failure of essential purpose of any limited remedy.

#### 15. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL QSS AND/OR ITS REPRESENTATIVES BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE 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 USE OR INABILITY TO USE THE SOFTWARE, HARDWARE AND/OR SERVICES, EVEN IF QSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF QSS AND/OR ITS REPRESENTATIVES TO YOU OR TO ANY THIRD PARTY FOR ANY AND ALL COSTS, LOSSES AND DAMAGES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES INCURRED PURSUANT TO SECTION 14.6 (INDEMNITY AND EXCLUSIONS) AND SECTION 14.7 (REMEDIES FOR INDEMNIFIED CLAIMS) ARISING OUT OF OR RELATING TO THIS LICENSE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED TEN THOUSAND (10,000) US DOLLARS. THIS SECTION 15 (LIMITATION OF LIABILITY) WILL SURVIVE THE TERMINATION OF THIS LICENSE FOR ANY REASON AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS LICENSE CONSTITUTE AN ESSENTIAL ELEMENT OF THIS LICENSE IN THE ABSENCE OF WHICH: (A) THE FEES AND OTHER TERMS IN THIS LICENSE WOULD BE SUBSTANTIALLY DIFFERENT; AND (B) QSS'S ABILITY TO OFFER AND YOUR ABILITY TO PURCHASE THE SOFTWARE OR ANY PORTION THEREOF UNDER THIS LICENSE WOULD BE IMPAIRED.

16. THIRD PARTY LICENSES. Certain Runtime Components may enable Partner Products and/or Target Systems to produce or reproduce (including but not limited to by ripping), copy, perform and/or display multimedia content (e.g., audio, images, video). The required intellectual property license rights necessary to use or offer devices with such capabilities will vary, depending on factors such as the intended use of the device, the types of content involved, the markets in which the device is used or sold, etc. You are solely responsible for determining all such requirements and making all of the arrangements (e.g., obtaining licenses, paying copyright collectives' fees, limiting the device functionality in some markets, etc.) necessary to make, use, import, distribute and/or sell your Partner Products for use in Target Systems, and/or to offer related services (to the extent permitted by the terms and conditions of this License), in all of your direct or indirect markets. The provisions of Section 14.6 (Indemnity and Exclusions) do not extend to infringement caused by producing, reproducing, copying, performing or displaying any multimedia content. Further, you agree to indemnify and hold QSS and/or its Representatives harmless from all Damages, and any reasonable costs and expenses incurred (including but not limited to reasonable lawyers' fees and disbursements) and Damages relating to any third-party action against QSS and/or its Representatives based on intellectual property infringement caused by making, using, importing, distributing and/or selling your Partner Products for use in Target Systems, and/or offering related services, in any of your direct or indirect markets ("Claims"), other than Claims based solely on infringement claims for which QSS remains responsible under Section 14.6 (Indemnity and Exclusions).

#### 17. TERM, SUBSCRIPTION RENEWAL & TERMINATION.

17.1 TERM, SUBSCRIPTION RENEWAL. The term of this License for paid-up Software licenses will continue until terminated in accordance with this Section 17 (Term, Subscription Renewal & Termination).

17.2 TERMINATION. This License will terminate immediately upon your failure to meet the partner eligibility requirements set forth in Section 4 (Partner License), or your breach of any one of the prohibitions in Section 6 (Prohibited Activities), whichever occurs first. QSS may terminate this License upon thirty (30) days' prior notice to you:

- (a) of a breach of a material term of this License if the breach has not been cured within the notice period, with the exception of payment or breach of confidentiality provisions, in which case termination will be immediate;
- (b) that you are violating the Spirit of this License, as determined by QSS in its sole discretion (during the thirty (30) day notice period you are encouraged to contact QSS to provide further information that may allow QSS to not terminate your license or to find another way to enable your activities);
- (c) if QSS decides to generally terminate the QNX Partner Software License of all or substantially all of its Partners;
- (d) if within six (6) months of acceptance of this License as a Partner you have not joined the QNX Partner Network;
- (e) if you do not, or no longer, qualify as a member of the QNX Partner Network; or
- (f) if within eighteen (18) months of your acceptance of this License as a Partner you do not offer and thereafter continue to offer a Partner Product.

You may terminate this License at any time for any reason. Termination is without prejudice to any right or remedy that may have accrued or be accruing to either party prior to termination.

17.3 IMPLICATIONS OF TERMINATION. Upon termination of this License, you will immediately destroy the original and all whole or partial copies of the Software, License Keys and Development License Certificates used under this License that are in your possession or control and cause your Affiliates and Contractors to do the same. Termination will not relieve you from your obligation to pay QSS any and all fees or other amounts due under this License at any time or for any period. Any Software subscription fees, or pre-payment of Software license fees are non-refundable. If either party terminates this License for any reason, all of your license rights, and those of your Affiliates and any Contractors, will immediately cease upon termination. The provisions of this License that are expressed or by their sense and context are intended to survive the termination of this License will survive, including but not limited to Sections 1 (Definitions), 5 (Deployment of Software), 6 (Prohibited Activities), 7 (Preservation of Rights), 8 (Third Party Restrictions), 9 (Ownership and Reservation of Rights), 10 (Feedback), 11 (U.S. Government Rights), 12 (Support), 13 (Confidential Information), 14 (Limited Warranties and Indemnity), 15 (Limitation of Liability), 16 (Third Party Licenses), 17 (Term, Subscription Renewal & Termination), 18 (Patent Non-assert), 19 (Governing Law), 20 (Assignment), 22 (Entire Agreement/Modifications), 23 (Interpretation) and 24 (Notice). Termination is without prejudice to any right or remedy that may have accrued, or be accruing to either Party prior to termination.

18. PATENT NON-ASSERT. You agree that you will not, and will not assist, permit or enable any other party to, use Software Source Code or any other QSS Confidential Information, or any part thereof for the purpose of:

- (a) preparing, filing, amending, modifying or prosecuting any patent applications,
- (b) evidencing any alleged, suspected or claimed infringement of intellectual property rights, and/or
- (c) mapping or reviewing any product, service, technology, architecture or specification against patents, patent applications, claim charts or similar material.

Further, you also agree that you will not, and will not assist, permit or enable any other party to:

- (i) assert or threaten to assert during the term of this License any patent, or
- (ii) assert or threaten to assert at any time any patent that was developed, in whole or in part, based upon or using the Software Source Code or any other QSS Confidential Information, or any part thereof,

against QSS or its Affiliates, or their resellers, distributors and channel partners, manufacturers, repair facilities or end users to the extent that any patents are directly or indirectly infringed by the making (and/or having made), using (and/or having used), fielding (and/or having fielded), designing (and/or having designed), packaging (and/or having packaged), testing (and/or having tested), assembling (and/or having assembled), and/or otherwise disposing of (and/or having disposed) any QSS or QSS Affiliate product or QSS or QSS Affiliate service for the full-life of such patents.

All obligations contained in this Section 18 (Patent Non-assert) shall encumber and run with applicable patents, if any, and shall be binding on any successors-in-interest or assigns thereof. Any attempted assignment or grant in contravention to this Section 18 (Patent Non-assert) shall be null and void.

19. GOVERNING LAW. This License will be governed by and construed in accordance with the laws in force in the Province of Ontario, Canada, without regard to the conflicts of laws provisions thereof. The parties hereby agree to the non-exclusive jurisdiction of the courts of the Province of Ontario. The parties hereby irrevocably waive:

- (a) the provisions of the United Nations Convention on Contracts for the International Sale of Goods, and
- (b) any right to a trial by jury regarding the resolution of any dispute between the parties hereto arising out of or in connection with this License.

20. ASSIGNMENT. You may not assign this License, or assign any rights or delegate any obligations under this License, without the prior written consent of QSS. Any consent will be conditional upon you first:

- (a) providing QSS with written acknowledgement of the assignee's acceptance of the terms and conditions of this License,
- (b) transferring the corresponding License Keys and Development License Certificates to the assignee; and
- (c) complying with the requirements of Section 13.8 (Return of Confidential Information).

An assignment will be deemed to include any merger (if you are a corporate entity) with another party, whether or not you are the surviving entity, the acquisition of more than 50% of any class of your voting stock by another party, or the sale of more than 50% of your assets. Any attempted assignment or delegation in violation of the foregoing will be void and of no effect. This License will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

21. EXECUTION AND ACCEPTANCE. Nothing but this License (or any other written agreement between you and QSS) authorizes you to undertake any of the activities described in this License, and doing so in contravention of these terms and conditions constitutes breach of contract, and/or copyright or patent infringement. Before or when you enter your License Key to unlock the Software this License will be displayed or made available for your review and acceptance. Choosing "I ACCEPT" during that process constitutes your execution and acceptance of this License, and the first date of such acceptance is the "Effective Date" for the purpose of this License.

22. ENTIRE AGREEMENT/MODIFICATIONS. This License, including but not limited to the License Guide and Third Party Terms List, the Invoice accompanying the Software, the corresponding Development License Certificate(s), and Schedule A (Hypervisor Maintenance & Support Addendum), constitutes the entire agreement between the parties pertaining to this subject matter and cancels and supersedes any prior or contemporaneous discussion, correspondence, statement, representation, negotiation, understanding, undertaking or agreement dealing with the same subject matter. The provisions of this Hypervisor Partner Software License Agreement will prevail in the event of a conflict between any of its terms and conditions and the provisions of the License Guide or Third Party Terms List, or any inconsistent or additional terms or conditions of any related purchase orders or invoices. No amendment, modification or waiver of any part of this License will be binding unless in a written document that expressly refers to this License and that is signed by authorized signatories of both parties.

23. INTERPRETATION. The divisions and headings in this License have been included for convenience only and will not affect its construction or interpretation. Any provision of this License 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.

24. NOTICE. All notices required or permitted to be given under this License shall be in writing and shall be delivered:

- (a) to QSS by mail or courier to the attention of the "Legal Department" at the address at the beginning of this License, with a copy by email to [licensing@qnx.com](mailto:licensing@qnx.com), and
- (b) to you by sending a copy to the address (including but not limited to your email address) that you provided for delivery of your Development License Certificate(s) and/or the address you provided for your myQNX.com registration.

25. CUSTOMER EXPERIENCE. QSS may contact you to ask about your impressions of the Software, the Hypervisor Product(s), myQNX.com, Foundry27, and/or any services you may have purchased. In consideration for the license rights granted to you under this License you agree to provide your feedback.

26. LANGUAGE. This License has been drafted in the English language at the express request of the parties. Les parties conviennent que la présente convention et tous les documents s'y rattachant soient rédigés en anglais.

Copyright (C) 2015 QNX Software Systems Limited, a subsidiary of BlackBerry. All rights reserved. QNX is a trademark of BlackBerry Limited, which is a registered trademark and/or used in certain jurisdictions, and used under license by QNX Software Systems Limited. All other trademarks belong to their respective owners.

Document Version: HPSLA.v1.0 Nov12-15

---

## SCHEDULE A: HYPERVISOR MAINTENANCE & SUPPORT ADDENDUM

---

A-0. **BACKGROUND.** This Schedule A: Maintenance & Support Addendum ("Schedule A"), together with the other terms and conditions of this QNX Hypervisor Partner Software License Agreement, provides the terms and conditions upon which QSS will provide you with the maintenance and support services described below for the Software. Schedule A is incorporated into the QNX Hypervisor Partner Software License Agreement. All defined terms in other parts of this License will have the same meanings in this Schedule A.

A-1. **UPDATES.** QSS may, in its sole discretion, provide you with access to Updates for use under the terms and conditions of this License (provided the Update is made available without a new end user license agreement, and corresponding License Guide and Third Party Terms List) or under any new end user license agreement terms and conditions that are provided with the Update.

A-2. **GENERAL.** For the purpose of this License, Updates:

(a) may not be shared with any other persons, unless they are entitled to use them under their own QSS license,

(b) do not include any major Software releases,

(c) do not include unlicensed QNX Product Portfolio components or technologies (e.g., the availability of Experimental Software will not entitle you to free Commercially Released Software versions if additional license fees apply), and

(d) do not include any new components, technologies or features that require QSS to pay additional third party fees.

A-3. **SERVICES.** Maintenance, support, custom engineering or other enhanced services are available from QSS under a Priority Support Agreement, Custom Support Plan Agreement, or an equivalent custom support plan with QSS. Contact an authorized QNX sales representative for more information (see <http://www.qnx.com/company/contact/>) about these services agreements. This License supplements and does not supersede such agreements.