

## QNX DEVELOPMENT LICENSE AGREEMENT

(Partner License)

This QNX Development License Agreement (the “**Agreement**”) is a legal agreement between the entity or individual identified in the Order (“**Partner**”) and BlackBerry Limited or its affiliate as set forth in subsection 14.5 below (“**BlackBerry**”) regarding certain Software (as defined below) and related Maintenance and Support (as defined below). Together Partner and BlackBerry are the “**Parties**” and individually a “**Party**”.

**BY CLICKING ON THE APPROPRIATE BUTTON, ACCEPTING AN ORDER REFERENCING THESE TERMS OR OTHERWISE INDICATING ACCEPTANCE OF THESE TERMS, OR BY INSTALLING, ACCESSING OR USING THE SOFTWARE OR MAINTENANCE AND SUPPORT SERVICES, YOU, AND THE PARTNER YOU REPRESENT, ARE AGREEING TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF THE PARTNER YOU REPRESENT HAS NOT OR DOES NOT AGREE TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT COPY, INSTALL, ACCESS OR USE THE SOFTWARE OR MAINTENANCE OR SUPPORT SERVICES.**

### 1. OVERVIEW.

Under this Agreement, Partner has obtained a license that falls under the “Partner License Class,” and therefore, Partner may *only* use the Software for Partnership Purpose(s) (defined below).

The licenses granted under this Agreement for Partnership Purpose(s) allow for development of 1) approved Partner Development Tool(s) that are interoperable with the QNX Product Portfolio and that supplement and/or complement the software development tools included in the QNX Product Portfolio and made available by BlackBerry or 2) Interoperable Partner Products which are interoperable with QNX Neutrino RTOS-based embedded applications and/or target systems that may be developed for sale, licensing, or distribution to joint OEM Customers of BlackBerry and Partner. In each case, BlackBerry is providing the licenses to Partner in order to encourage, promote, proliferate and support use of QNX Neutrino RTOS-based embedded applications and/or target systems in the marketplace. **Any use of the Software outside of the scope of the Partnership Purpose(s) outlined herein is strictly prohibited. For clarity, Partner may NOT use the Software to build QNX Neutrino RTOS-based embedded applications and/or products for commercial use or distribution; any such use of the Software requires a paid Commercial License Class license.**

BlackBerry licenses a portfolio of software products (collectively known as the “**QNX Product Portfolio**”) which may be used to build and maintain a QNX Neutrino RTOS-based embedded applications and/or products. The QNX Product Portfolio products which may be licensed to Partner include:

1) The software development platform components (all the components collectively referred to as “**Software Development Platform**” or “**SDP**”). The Software Development Platform as defined herein includes (a) a general-purpose real-time operating system known as the QNX Neutrino® RTOS, which includes the Runtime Subsystems, and (b) the QNX® Momentics® Tool Suite, which includes the integrated development environment and other developer tools, including certain compiling, file editing, source modeling, debugging, profiling, and other developer tools.

2) Other add-on software products included as part of the QNX Product Portfolio (collectively “**Specialized Software**”), Please see the Product Portfolio Guide made available by BlackBerry for specific list of all software products included in the QNX Product Portfolio, descriptions of such Software and the relevant license offerings.

In connection with licensing any Software included in the QNX Product Portfolio for the Partnership Purpose, BlackBerry will provide Partner and its Developers access to a developer web portal, currently available at “myQNX.com”(“**Developer Web Portal**”), which, among other things, provides access to a QNX developer community, content and information regarding the Software, including a software delivery and management tool (“**Software Center**”), and license manager tools (“**License Manager Tool(s)**”), each which may only be accessed and used strictly in support of licenses granted to Partner herein and for no other purpose.

### 2. CERTAIN DEFINITIONS.

“**Affiliate**” means, with respect to either Party, any other entity controlling, controlled by, or under common control with such Party.

“**Authorized Cloud Service Provider**” means any third party authorized by BlackBerry to provide Partner a Cloud Computing Environment. A current list of such Authorized Cloud Service Provider(s) may be found [here](#).

“**Build Server**” means a Partner and/or a Partner Affiliate operated and controlled computer instantiation, whether physical or virtual, containing a specific installation of the Software Development Platform (SDP) or parts thereof (including Runtime Subsystems), and if licensed, other Specialized Software.

“**Cloud Computing Environment**” means an on-demand network access to a shared pool of computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

“**Cloud Target System Image**” means BlackBerry provided Software that is designated to run a Sample Target System in a Cloud Computing Environment.

“**Derivative Cloud Target System Image**” means a copy of a Cloud Target System Image that remains linked to the parent Cloud Target System Image allowing traceability and source control. The parent Cloud Target System Image may only be supplied by BlackBerry.

“**Developer**” or “**Partner Developer**” means any employee, contractor, or agent of Partner (or any Partner Affiliates) which is named and identified (via email address) to whom Software (or any component thereof) is made available for access or use.

“**Documentation**” means the standard applicable end user documentation supplied by BlackBerry to Partner and its Developers, including any relevant user manuals, operating instructions, installation guides, help files, in printed or electronic form intended for use with the Software.

**“End User Customer”** means an entity or individual that uses or accesses a Finished Target System for personal or commercial use and not for further development or creation of another Finished Target System for resale or redistribution.

**“Finished Target System”** means a product, device, component, or system (containing software and/or hardware components) in a final form of manufacturing which is intended for distribution to End User Customers (e.g. digital cockpit, domain controller, medical device, industrial robot, drone, etc.) into which OEM Customer’s application(s) containing both the Interoperable Partner Product and BlackBerry Runtime Subsystems have been wholly or partially integrated.

**“High Risk Application”** means any product, device, component, or system which if it fails or is interrupted, may result in loss of life, or other serious or catastrophic personal injury and/or substantial financial or commercial or societal loss.

**“Intellectual Property Rights”** means the collective, worldwide intellectual property and proprietary rights of a party now held or hereafter filed, issued, created, or acquired under statutory or common law in any jurisdiction, including under patent, copyright, trademark, and trade secret law, or acquired by contract, and any and all other proprietary rights whether or not protectable by statutory or common law.

**“Interoperable Partner Product(s)”** means product, device, component, or system (containing software and/or hardware components) that is developed by Partner and that (a) runs on, interoperates with, or enables the Runtime Subsystems of the Software, (b) is an Interim Target System and not a Finished Target System and (c) only marketed, licensed, sold, and or otherwise provided to joint OEM Customers of Partner and BlackBerry who intend include the same into a Finished Target System developed by the OEM Customer.

**“Interim Target System”** means a product, device, component, or system containing software and/or hardware components (e.g. system on a chip (SOC), wireless chipset, driver, application framework, user interface framework, industrial protocol stack, etc.) that is designed to be incorporated into or combined with a Finished Target System and that runs on, interoperates with, or enables the Runtime Subsystems of Software and is interoperable with the QNX Neutrino RTOS and/or Specialized Software.

**“License Certificate”** means a QNX license certificate, issued by BlackBerry to Partner, which identifies the Software licensed, the relevant License Term, the License Keys for the Software, and other information needed to access and deploy the Software licensed. Note, no License Certificate will be issued for the Cloud Computing License described in Exhibit “A”.

**“License Key”** means a unique set of numbers, characters and/or symbols issued by BlackBerry in or on the License Certificate to unlock licensed components of the QNX Product Portfolio during installation. Each License Key is specific to the specific license model under which the Software is licensed and may only be used in connection with the specific license identified in the relevant License Certificate.

**“License Term”** means the license term identified in the relevant Order.

**“License Parameter(s)”** means any factor that additionally serves as a basis for determining the scope of the license to the Software as identified in the Order, including as where applicable the total number of Partner Developers who are licensed, the duration of the license, etc.

**“OEM Customer”** means a joint customer of Partner and BlackBerry that engages in development, licensing, sale or delivery of Finished Target Systems, either directly or indirectly through other partners or channel partners.

**“Order”** means an ordering document issued by BlackBerry (which may include a quote, order, email confirmation or otherwise) that identifies the Partner, the Software licensed, the License Term and any other relevant License Parameters. Multiple Orders may be applicable to this Agreement.

**“Open Source Software”** or **“OSS”** refers to any software that contains or is derived in any manner (in whole or in part) from any software that is distributed as open source code pursuant to an OSS License or similar distribution models, including, but not limited to, software subject to a license published by the Open Source Initiative (<http://opensource.org>).

**“OSS License”** means a license requiring (as a condition of use, modification, or distribution) that the Software, or any portion thereof, or other materials combined or distributed with the Software, or any portion thereof, be: (i) disclosed or distributed in source code form, including hardware description language, software source code, or other similar form; (ii) licensed for the purpose of making derivative works; or (iii) licensed or redistributable at no charge. Notwithstanding the foregoing, OSS License includes any license identified as an open source license by the Open Source Initiative (<https://opensource.org/>), Free Software Foundation (<http://www.fsf.org>) or other similar open source organization or listed by the Software Package Data Exchange (SPDX) Workgroup under the Linux Foundation (<http://www.spdx.org>).

**“Partner Development Tool(s)”** means a software development tool that is developed by Partner and supplements and/or complements the software development tools included in the QNX Product Portfolio, but that is not competitive with any software development tool currently offered or planned to be offered by BlackBerry to joint customers of Partner and BlackBerry.

**“Partnership Purpose(s)”** means the use of the Software to develop Partner Development Tool(s) and/or Interoperable Partner Product(s) which are interoperable with the Software to encourage, promote, proliferate and support use of QNX Neutrino RTOS-based embedded applications and/or target systems in the marketplace. For clarity, Partnership Purpose(s), as defined herein, include uses of Software for the following purposes: (i) to develop, evaluate, test, debug, profile, maintain, support, demonstrate and promote approved Partner Development Tool(s) and/or Interoperable Partner Product(s) that are to be owned by Partner and/or Partner Affiliates (subject to any underlying embedded third-party intellectual property rights) and that Partner (and/or Partner Affiliates) are intending to generally promote and distribute to joint customers of BlackBerry and Partner; (ii) to determine the suitability of Runtime Subsystems for interoperability with Partner Development Tool(s) and/or Interoperable Partner Product(s); (iii) to conduct exploratory development or proof-of-concept prototyping of Partner Development Tool(s) and/or Interoperable Partner Product(s); (iv) to extend hardware or peripheral support for QNX Neutrino RTOS; (v) to collaborate with other authorized and licensed QNX Product Portfolio developers to facilitate teamwork, integration, and/or interoperability in development projects (including sharing Partner Development Tool(s) and/or Interoperable

Partner Product(s); and (vi) to demonstrate and promote Partner Development Tool(s) and/or Interoperable Partner Product(s) (with Sample Partner Applications, Sample Target Systems, and/or other third-party QNX Neutrino RTOS-based embedded applications and/or target systems) to OEM Customers. Partnership Purpose(s) as defined herein does not include, and expressly excludes, the right to use Software licensed herein to (a) develop QNX Neutrino RTOS-based embedded applications and/or target systems for sale, licensing, or distribution to third parties; or (b) provide services to third parties or develop applications, modules, products, devices or systems for the benefit of, or on behalf of, any third-party. The licenses delivered herein for the Partnership Purpose(s) are free of charge and not to be used to provide services that would otherwise require a paid license to the Software from BlackBerry.

**“Partner System(s)”** means the desktops, laptops or virtual development environments, repositories, and/or Build Servers accessed and/or used by Partner Developers. For clarity, use of the Software in a Cloud Computing Environment is subject to certain additional restrictions specified in Exhibit “A”.

**“Runtime Subsystem”** means a file or set of files, including headers and libraries, that are included in the Software and intended to be integrated into and operate as part of applications and/or target systems developed by other Commercial License Class licensees of Software. The Runtime Subsystems included in Software are identified by BlackBerry (currently through the Software Center). For clarity, although the Software Center identifies the Runtime Subsystem as “Redistributable”, Partner has obtained a class of license that does not permit Partner to include or integrate Runtime Subsystems in Partner developments that are distributed to third parties, including any Partner Development Tool(s) and/or Interoperable Partner Product(s) developed by Partner hereunder.

**“Sample Partner Application(s)”** means any application or module developed by Partner’s Developers or third parties using Software into which Runtime Subsystems’ headers and/or libraries may be wholly or partially integrated, which if developed by Partner using the licenses granted herein are solely for purposes of demonstrating the functionality of the Partner Developer Tool(s) and/or Interoperable Partner Product to potential customers and not for any other commercial purpose.

**“Sample Target System”** means any product, device, component, or system (containing software or software and hardware components) into which (i) Sample Partner Application(s), (ii) other Partner or third-party applications, software, and/or subsystems, and (iii) Runtime Subsystems and have been wholly or partially integrated, which if developed by Partner using the licenses granted herein are solely for purposes of demonstrating the functionality of the Partner Developer Tool(s) and/or Interoperable Partner Product to potential customers and not for any other commercial purpose.

**“Software”** means the BlackBerry software identified in the relevant Order which Partner has obtained a license to, which definition shall include any and all computer code delivered by BlackBerry to Partner in whatever form, including, where applicable, the Software Development Platform (SDP) and any Specialized Software licensed hereunder, any Updates to the same delivered in connection with Maintenance and Support or otherwise made available by BlackBerry to Partner (at its sole discretion), evaluation copies of Software, Experimental Software, and any associated interfaces, Runtime Subsystems, License Keys, installation software (including the Software Center), software delivered as part of any License Manager Tool(s), content, and Documentation where included in or delivered in connection with a license to the specific software licensed hereunder. Software specifically excludes Third-Party Commercial Software that may be delivered by BlackBerry.

**“Commercially Released Software”** means Software that is formally released by BlackBerry and/or generally available to BlackBerry customers and fully supported by BlackBerry under BlackBerry Maintenance and Support offering. Commercially Released Software is generally identified in the Software Center by BlackBerry as “Generally Available,” “GA,” or “Stable” Software. For clarity, the definition of Commercially Released Software specifically excludes all Experimental Software and Custom Software.

**“Custom Software”** means any and all modifications, derivatives, customizations or extensions of or to Software delivered by the BlackBerry professional services team to Partner or any other BlackBerry customer under a separate services agreement, e.g. for when Partner or other customers purchases add-on support offerings such as Custom Support, Priority Support or other paid support outside of BlackBerry’s standard Maintenance and Support offering. Custom Software shall be deemed Experimental Software, unless it has been designated by BlackBerry as stable and labeled as “Official” in the Software Center. For clarity, Custom Software is not supported under the standard Maintenance and Support offering. Partner may purchase add-on services under a separate agreement to develop or obtain support for Custom Software.

**“Experimental Software”** means any software delivered by BlackBerry that is not Commercially Released Software. Experimental Software is generally identified in the Software Center by BlackBerry as “Experimental,” “Alpha,” “Beta,” “Validated,” “Draft,” “Demo,” or “Trial” Software and includes all custom code and/or modifications to Commercially Released Software that might be created by Partner or its Affiliates and their respective Developers, including Software delivered as part of Maintenance and Support or any professional support engagement (i.e. Custom Software) which is not designated as “Generally Available”, “GA”, “Stable”, or “Official”. Experimental Software is not supported under the standard Maintenance and Support offering.

**“Source Code”** means the human readable form of computer software code delivered hereunder, which may include BlackBerry proprietary source files or Open Source Software delivered in source form, and any related source code comments, design documentation, and corresponding header files, build scripts and make files. Some Software files may be delivered in Source Code format.

**“Standards”** means any or all 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.

**“Third-Party Commercial Software”** means third-party commercial software (other than OSS Software) which is distributed by BlackBerry on behalf of the third-party licensor and which is licensed on terms and conditions that differ from the terms and conditions set out in this Agreement, as identified at the time of delivery and/or as outlined in the Third-Party Licensing Considerations Supplement.

**"Third-Party Items"** means Partner or any third party: (i) software, including applications; (ii) content; (iii) services, including Cloud Computing Environments, internet connectivity, systems, airtime services, wireless networks and non-BlackBerry websites; and (iv) devices, servers, equipment and other hardware products.

**"Update(s)"** means any Software that provides error corrections, functional enhancements and/or performance improvements, which are issued in Medial (e.g. 7.x) or Minor (e.g. 7.x.x) Software updates, or in any intervening maintenance releases (including but not limited to service packs and patches) to Commercially Released Software. For clarity, Update(s) do not include any major Software releases which are identified with a change to the left of the decimal point (e.g. 7.x to 8). Until an Update becomes Commercially Released Software it will be considered Experimental Software.

**3. DELIVERY.** BlackBerry will deliver a License Certificate, identifying the Software licensed, the relevant License Term, and the License Keys for the Software which may be used by Partner Developers to access the Software. Note, for the Cloud Computing License described in Exhibit "A", no License Certificate will be issued.

#### **4. LICENSES; RESTRICTIONS.**

**4.1 PARTNER LICENSE.** If Partner's License Certificate indicates that it has obtained a "Partner License", then this section shall apply:

Subject to this Agreement, during the License Term, BlackBerry grants to Partner, under BlackBerry's Intellectual Property Rights, a non-exclusive, non-transferable license to allow Partner Developers to:

(i) install the Software on Partner Systems, includes rights to make copies of Software to follow normal backup and archiving practices for Partner Developer use;

(ii) access, use, link and compile the Software on Partner Systems solely in order to develop, evaluate, test, debug, profile, maintain, support, demonstrate and promote approved Partner Developer Tool(s) and/or Interoperable Partner Product(s); this license includes rights to create Sample Partner Applications and/or Sample Target Systems and install and use Runtime Subsystems on or in connection with the developed Sample Partner Applications and/or Sample Target Systems, solely to evaluate, test, debug, demonstrate and promote approved Partner Developer Tool(s) and/or Interoperable Partner Product(s);

each of (i)-(ii) only in accordance with Documentation and solely for Partnership Purpose(s).

**4.2 SPECIFIC REQUIREMENTS AND RESTRICTIONS WITH RESPECT TO THE PARTNER LICENSE.** In addition to the other general restrictions identified in this Agreement, the Partner agrees to comply with the following specific requirements, restrictions and limitations which apply to the licenses granted herein:

**4.2.1** Partner shall not (and shall not permit any third-party including any Partner Developer to): (a) develop QNX Neutrino RTOS-based embedded applications and/or target systems for sale, licensing, or distribution to third parties (only Sample Partner Applications and/or Sample Target Systems may be built for demonstration of Partner Development Tool(s) and Interoperable Partner Product(s)); or (b) use Software to develop Partner Developer Tool(s) and/or Interoperable Partner Product(s) on behalf of or for the benefit of any third-party or otherwise provide services to any third-party in connection with licenses granted under this Agreement; or (c) except as other authorized herein use the Software in a Cloud Computing Environment.

**4.2.2.** The Partner Development Tool(s) and Interoperable Partner Product(s) developed hereunder must be owned by Partner (subject to any third-party rights embedded in the products) and must be made generally available to all joint customers. Development of the Partner Development Tool(s) and/or Interoperable Partner Product(s) may not be funded by, developed for, or be owned by any third party.

**4.2.3** The Partner Development Tool(s) and Interoperable Partner Products developed hereunder may run on, interoperate with, or enable the Runtime Components of Software but may not include or embed or combine (a) any portion or component of Software as delivered (including Runtime Subcomponents or any other subcomponent or portion of Software) or (b) any modification or derivative of any portion or component of Software (including Runtime Subcomponents or any other subcomponent or portion of Software).

**4.2.4** In advance of using Software to develop or test any Partner Development Tool(s), Partner shall describe the development tool that Partner intends to develop including the features or functionality of the tool to BlackBerry and obtain prior written approval for the specific tool that Partner intends to develop. In this way, BlackBerry can confirm that the tool is complementary to the BlackBerry offerings and not competitive with any BlackBerry development tool which already exists in marketplace or otherwise planned for development. Additionally, after Partner has completed the development of a Partner Development Tool, and prior to commercialization of the Partner Development Tool, Partner shall demonstrate the Partner Development Tool to BlackBerry and obtain written approval for commercialization in the marketplace.

**4.2.5** Any Interoperable Partner Product(s) developed must be an Interim Target System licensed, sold or otherwise made available to OEM Customers for integration into or combination with a Finished Target System developed by the OEM Customer, where the Interim Target System licensed or sold to the OEM Customer still requires further significant development in order to create a Finished Target System available to an End User Customer. Further significant development is implied if the software included in the Interoperable Partner Product comprises less than 50% of the software included in the Finished Target System that is commercially released by the OEM Customer for use by End User Customers. Partner may also seek approval in advance of any commercialization of the Interoperable Partner Product(s) if Partner is not certain if it can meet this requirement.

#### **4.3 EARLY ACCESS LICENSE TO EXPERIMENTAL SOFTWARE.**

**4.3.1 Early Access License.** If Partner's License Certificate indicates that it has obtained an "Early Access License", then Partner has obtained an Early Access License to Experimental Software (e.g. Software labeled as "Experimental", "Alpha", "Beta" in the Software Center) under the terms

of this Agreement and this Section shall apply. From the date of delivery and prior to the commercial release of such Software (if any), Partner may install and use the Experimental Software delivered under an Early Access License solely in support of other licenses granted to Partner herein and for no other purpose.

**4.3.2 Limitations and Restrictions Applicable to Early Access Licenses to Experimental Software.** All Software delivered under an Early Access License, shall be deemed “Software” and subject to all the general restrictions on use, warranty disclaimers and liability limitations stated herein. Notwithstanding any contrary term specified in any other sections of this Agreement, with respect to all Experimental Software delivered under an Early Access License, the following terms apply and override any other term in this Agreement: (a) all such Software is provided “as is” without any warranties, representations or conditions of any kind; (b) Partner shall not be entitled to Maintenance and Support with respect to such Software and any Upgrades of such Software provided by BlackBerry, is provided at BlackBerry sole discretion; (c) either Party may terminate the license to such Software with ten (10) days written notice to the other party; and (d) upon termination of the license or commercial release of such Experimental Software delivered under an Early Access License, unless a license to the relevant Software is purchased under a separate Order, Partner shall promptly remove all copies of such Software from its systems, and upon request provide BlackBerry written certification of the same.

**4.4 LICENSES TO CUSTOM SOFTWARE AND EXPERIMENTAL SOFTWARE NOT DELIVERED UNDER AN EARLY ACCESS LICENSE.** For copies of Custom Software and for Experimental Software not delivered under an “Early Access License,” the following shall apply: Subject to this Agreement, and for as long as Partner owns a valid license to Software under the terms of this Agreement, BlackBerry grants to Partner a non-exclusive, non-transferable license to allow each Partner Developer to install, access and use the Software strictly in support of the licenses granted to Partner herein and for no other purpose. All Custom Software and any Experimental Software which is not delivered under an “Early Access License” shall be deemed “Software” for purposes of the general restrictions outlined in section 4.6, warranty disclaimers, and liability limitations identified in this Agreement. For clarity, no warranties, representations or conditions of any kind are provided under this Agreement for Custom Software and Experimental Software.

#### **4.5 ACCESS AND USE OF THE DEVELOPER WEB PORTAL, SOFTWARE CENTER AND LICENSE MANAGER TOOL(S).**

**4.5.1. Developer Web Portal.** Partner and its Developers will be provided access to the Developer Web Portal. Partner understands and agrees to any access and use of Developer Web Portal, including the developer community, content and information regarding the Software shall be subject to the Web Site Terms of Use found at [http://www.qnx.com/web\\_terms](http://www.qnx.com/web_terms) and the Privacy Notice found at <https://www.BlackBerry.com/ca/en/legal/privacy-policy>. By assenting to the terms of this Agreement, Partner, on behalf of itself and its Developers, agrees to such terms.

**4.5.2. License Manager Tool(s).** BlackBerry will provide Partner and Partner Developers access to certain licensing management tools which will assist Partner in the management of its licenses. Using the License Manager Tool(s), Partner may view its licenses and any paid for support plans, deploy licenses to Developers and/or Build Servers, transfer licenses as permitted, add or remove Developers, and perform other license management tasks. Partner and Partner Developers are required to use the License Manager Tool(s) made available to them and may not disable or circumvent any access control, process or procedure established by the tool to help manage and monitor the license. The underlying software made available as part of any License Manager Tool shall be deemed “Software” for purposes of the general restrictions outlined in section 4.6, warranty disclaimers, and liability limitations identified in this Agreement. All such Software is provided “as is” without any warranties, representations or conditions of any kind.

**4.6 GENERAL RESTRICTIONS AND REQUIREMENTS APPLICABLE TO ALL SOFTWARE AND ALL LICENSES GRANTED HEREUNDER.** With respect to any Software licensed by BlackBerry to Partner under this Agreement the following applies. Except as otherwise expressly permitted under this Agreement, Partner shall not (and shall not authorize or permit Partner Developer(s) or any third party to): (a) use the Software in excess of or beyond the feature set(s), License Term, License Parameters, and/or other restrictions/limitations stated hereunder (or under the relevant Order); (b) download or use the Software on systems which are not owned or under the control of Partner (and/or its Affiliates or Partner Developers); (c) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except and only to the extent any foregoing restriction is prohibited by applicable law; (d) modify any Software delivered in binary code; (e) use the Software in any way that is unlawful, malicious, or in violation in any applicable laws, ordinances, codes, regulations or third-party proprietary or property rights; (f) 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; (g) distribute, sell, license or otherwise provide the Software to third parties; (h) use or permit the Software to be used to perform development or other services for third parties, whether on a service bureau, software as a service, time sharing basis or otherwise; (i) release, publish, and/or otherwise make available to any third party the results of any performance or functional evaluation of the Software without the prior written approval of BlackBerry; (j) disable or circumvent any access control or related device, process or procedure established with respect to the Software; (k) alter, cover or remove any proprietary or licensing notices or legends contained on or in the Software; (l) share License Certificates, License Keys or passwords to Developer Web Site with third parties; or (m) allow any competitor of BlackBerry to access or use or evaluate the Software or use the Software in connection with developing competitive products. For the avoidance of doubt, all restrictions specified above with respect to Software apply to all components of the Software. Partner agrees that it is liable and responsible for any action or inaction of Partner Affiliates and Partner Developer(s) which is in violation of the terms of this Agreement, and Partner agrees that any action or inaction by any Partner Affiliate and Partner Developer(s) shall be deemed to be an action or inaction by Partner.

#### **5. OPEN SOURCE SOFTWARE AND THIRD-PARTY SOFTWARE**

**5.1 OPEN SOURCE SOFTWARE.** Software may contain certain Open Source Software. Open Source Software is identified in the Software Center in the “OSS Compliance Link” available in the Software Center for each individual Software File (“**OSS Compliance File**”), with references to the relevant OSS License (where reference to the OSS License is mandated by the OSS licensor). Notwithstanding anything else herein, Open Source



Software delivered as part of Software may also be subject to the relevant third-party OSS License (including any proprietary notices, disclaimers, requirements and/or extended use rights outlined in such OSS License, to the extent applicable), and in the event of any conflict between the terms of this Agreement and the OSS License for the specific use case, then the OSS license shall prevail with respect to the specific third-party Open Source Software.

**5.2 THIRD-PARTY COMMERCIAL SOFTWARE.** Where Third-Party Commercial Software is made available by BlackBerry, such Third-Party Commercial Software may be identified in the Third-party Licensing Considerations Supplement (which may be accessed and viewed at [http://www.qnx.com/qnx\\_sdp7.1\\_third\\_party\\_terms](http://www.qnx.com/qnx_sdp7.1_third_party_terms) and is also available through the Software Center) or may be identified prior to or at the time of delivery. Before using any of the software (including any Updates) included in the QNX Product Portfolio, Partner should review the licensing considerations for Third-Party Commercial Software and any other information provided prior to or at the time of the delivery of such third-party software. Development and/or exploitation of Sample Partner Applications and/or Sample Target Systems developed using such Software may require additional third-party licenses which are not included as part of the licenses granted herein. Notwithstanding anything else herein, Partner understands and agrees that is the Partner's responsibility to monitor the Third-Party Licensing Considerations Supplement and any other information provided with the Third-Party Commercial Software, included with every Update of Commercially Released Software, for considerations that might be identified and to identify and secure any other third-party intellectual property rights needed to develop or commercially exploit the Sample Partner Application and/or Sample Target System(s), and for making all of the arrangements (e.g., obtaining licenses, paying copyright collectives' fees, limiting the device functionality in some markets, etc.) necessary to accomplish the same.

**5.3 OSS AND THIRD PARTY LICENSING CONSIDERATIONS.** Partner understands and agrees that BlackBerry shall not be responsible or liable for the Third-Party Commercial Software or Open Source Software, nor will BlackBerry warrant or support such software. Partner's access and use of the Third-Party Commercial Software or Open Source Software, and any liability, responsibility, warranties, or support are expressly disclaimed by BlackBerry.

## **6. MAINTENANCE AND SUPPORT.**

**6.1 OVERVIEW.** "Maintenance and Support" as used herein means the standard maintenance and support offering that BlackBerry may deliver to its partners, which is described in the Maintenance & Support Policy found at [http://www.qnx.com/partner\\_maintenance\\_support\\_terms](http://www.qnx.com/partner_maintenance_support_terms) (or such other site as may be made available by BlackBerry from time-to-time), as may be amended by BlackBerry and which are incorporated herein by this reference. BlackBerry, at its sole discretion, may make Maintenance and Support available to Partner, provided that Partner complies with the requirements and restriction stated in the Maintenance & Support Policy. Partner may also obtain custom support under a separate professional services agreement. Each Party shall support the joint customers of the Parties per their own agreement with such customer.

**6.2 SUPPORTED SOFTWARE.** Under BlackBerry's standard partner Maintenance and Support offering described in the Maintenance & Support Policy, BlackBerry will support the current version of the Commercially Released Software only. Neither Experimental Software, nor Custom Software is supported as part of BlackBerry standard Maintenance and Support offering.

**6.3 ADD-ON SUPPORT OFFERING; PROFESSIONAL SERVICES TO BE DELIVERED UNDER SEPARATE AGREEMENT.** If Partner is seeking support for Custom Software or Experimental Software or if Partner wishes to accelerate fixes to the supported Commercially Released Software according to Partner directed priorities, then Partner may purchase add-on services under a separate agreement. All services outside of standard partner Maintenance and Support, including any "Priority Support" or "Custom Support Plan", shall be delivered under a professional services agreement separately agreed to by the Parties

## **7. TERM; TERMINATION.**

**7.1 TERM.** This Agreement shall be effective as of the date the License Certificate is delivered to Partner (or if no License Certificate is delivered, then, when the Software is first delivered or made available to Partner) and shall remain in effect in accordance with this Agreement.

**7.2 TERMINATION.** This Agreement may be terminated by either Party: (i) if the other Party materially breaches this Agreement and fails to cure it within thirty (30) days after written notice of the breach; and (ii) if the other Party ceases to carry on business in the ordinary course, becomes insolvent or the subject of voluntary or involuntary bankruptcy or liquidation proceedings, has a receiver, trustee or similar officer appointed with respect to the whole or substantial part of its assets, or is the subject of any creditor protection or proposal or similar arrangement under applicable law. For clarity, any use of the Software outside of the Partnership Purpose(s) or in violation of any restriction or requirement stated herein shall be deemed a material breach of this Agreement. This Agreement may be terminated by BlackBerry upon a sale of all or substantially all the assets of Partner, any merger, consolidation or acquisition of Partner with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting shares of Partner in one or more related transactions.

**7.3 EFFECT OF TERMINATION.** Upon termination of this Agreement (or if only licenses to a portion of the Software expires or is terminated, the subsections below shall be limited to such portion), for any reason:

**7.3.1** all licenses and rights provided to Partner under this Agreement shall immediately terminate;

**7.3.2** Partner and its Developers shall immediately cease all use of and/or access to the Software and delete and/or destroy all copies of Software that are in the possession or control of Partner and/or its Developers and, on BlackBerry's request, confirm the same in writing signed by an officer of Partner; and

**7.3.3** BlackBerry shall have the right to block any use of and/or access to the Software, and/or delete any files, programs, data and e-mail messages associated with any account of Partner or a Developer, without notice to Partner or the Developer.

**7.4 SURVIVAL.** 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 the following Sections: Section 2 (Certain Definitions), Section 4 (license restrictions stated only), Section 5 (Open Source Software; and Third-Party Software), Section 7 (Term; Termination), Section 8 (Compliance; Audit), Section 9 (Ownership), Section 10 (Confidentiality), Section 11 (Limited Warranties; Disclaimers), Section 12 (Indemnity), Section 13 (Limitation on Liability), Section 14 (Miscellaneous) and Exhibit A (license restrictions stated only).

**8. COMPLIANCE; AUDIT.** BlackBerry may monitor Partner's and Partner Developers' use of the Software to determine compliance with this Agreement. Within thirty (30) days of BlackBerry's written request, Partner (and/or its Developers) will provide BlackBerry a report which will identify information reasonably requested by BlackBerry in order to show compliance with the License Parameters and compliance with licensing restrictions identified in this Agreement and in the Order. Partner will maintain accurate records regarding access and use of Software for a minimum of five (5) years from the actual usage date. During the Term and for one (1) year after any expiration or termination of this Agreement, BlackBerry may, through an independent auditor and/or itself, audit Partner's and/or its Developers' access and use of the Software, including review of any Partner Development Tool(s) and/or Interoperable Partner Product(s) developed. Any use of the Software beyond the use rights and restrictions stated herein shall be deemed to be a material breach of this Agreement.

## **9. OWNERSHIP.**

**9.1 BLACKBERRY INTELLECTUAL PROPERTY.** Notwithstanding anything else herein, Partner acknowledges and agrees that all Software delivered to Partner is licensed under these terms and not sold. The Software is protected by intellectual property laws, both locally and internationally. Partner acknowledges and agrees that it does not acquire any Intellectual Property Rights in or relating to the Software (including but not limited to any modifications to source code by whomever made or elements of the Software embodied in derivative works created by Partner and, its Affiliates and their respective Developers and any translation, modification, or other derivative work). Partner agrees that it shall not refute or otherwise challenge BlackBerry's and/or any of its Affiliates' ownership of any such Intellectual Property Rights. All comments, ideas, changes or other feedback provided by Partner and, its Affiliates and their respective and/ their respective Developers to BlackBerry regarding the Software ("**Feedback**") shall be owned by BlackBerry and Partner (on behalf of itself and its Affiliates (as applicable)) agrees to and hereby assigns the same to BlackBerry. BlackBerry and its licensors retain all rights, title and interests in and to the Software and reserve all rights in the Software not expressly licensed by this License, including but not limited to all Intellectual Property Rights and rights in Confidential Information. No trademarks or service marks of BlackBerry or its licensors are licensed to Partner, and Partner understands and agrees that BlackBerry trademarks or service marks may not be applied to Partner's products, goods or services without the express written permission of BlackBerry. No implied licenses are granted herein.

**9.2 PARTNER INTELLECTUAL PROPERTY.** As between the Parties, subject to all underlying rights of BlackBerry and its licensors in the Software and any embedded third-party Intellectual Property Rights, including Runtime Subsystems and its derivatives, and subject to the terms and conditions of this Agreement, all other rights, title and interests in and to any other software independently developed by Partner or Partner Developers pursuant to the licenses granted in this Agreement (e.g. Partner Developer Tool(s), Interoperable Partner Product(s), Sample Partner Applications and/or Sample Target Systems) will be owned and retained by Partner.

## **10. CONFIDENTIALITY.**

**10.1 DEFINITIONS.** "**Confidential Information**" means any non-public data, information and other materials, in any form or medium, regarding the products, technology, software, services, or business of a Party (and/or, if either Party is bound to protect the confidentiality of any third-party's information, of a third-party) which is provided by or made available by one Party ("**Disclosing Party**"), either directly or indirectly through third parties, to the other party ("**Receiving Party**") where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature, be reasonably considered to be confidential and/or proprietary. "**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 Disclosing Party to suffer a significant loss of competitive and/or commercial advantage in its markets. The Parties agree that, without limiting the foregoing, all Software (and any information that is delivered with or embedded in or related to Software or to the development, testing or commercial exploitation thereof, and any performance data, benchmark results, training materials and technical information relating thereto), the Documentation, BlackBerry pricing information, and Software Center, content, account information, access ID's and passwords used to access Software, Software Center or the Developer Web Portal, License Certificates, and License Keys provided or made available to Partner shall be deemed the Confidential Information of BlackBerry. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is already known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) becomes publicly available without fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without restriction as to disclosure, or is approved for public release by written authorization of the Disclosing Party; (iv) is independently developed or created by the Receiving Party without use of the Disclosing Party's Confidential Information; or (v) Feedback.

**10.2 DUTIES.** The Receiving Party agrees to: (i) use the Confidential Information of the Disclosing Party only to perform hereunder (including providing the features and services associated with the normal use of the Software) or exercise rights granted to it hereunder; (ii) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar proprietary information, but in no case will the degree of care be less than reasonable care; (iii) store any copies of Software Source Code on computers and/or networks that are secured by controls employed by Receiving Party for materials reasonably considered to be Trade Secrets or otherwise highly confidential; and (iv) disclose the Disclosing Party's Confidential Information only to its Affiliates, and those employees, agents and contractors of the Receiving Party and those of its Affiliates (collectively "**Representatives**") who have a need to know such information for the purposes of this Agreement, provided that any such Representative shall be subject to obligations of non-use and confidentiality with respect to such Confidential Information at least as restrictive as the terms of this Agreement. All restrictions applicable to Receiving Party are equally applicable to Receiving Party's Representatives and the Receiving Party shall remain responsible and liable for any non-compliance of such Representatives with the terms of this Agreement. Each Party agrees to provide written notice

to the other immediately after learning of, or having reason to suspect, a breach of any of the confidentiality or non-use restrictions set forth in this Section.

**10.3 DISCLOSURES REQUIRED BY LAW.** Either Party may disclose Confidential Information of the other Party if it is required to be disclosed by law or governmental regulation, provided that the Receiving Party provides reasonable notice to Disclosing Party of such required disclosure (to the extent permitted by law) and reasonably cooperates with the Disclosing Party in limiting such disclosure and ensuring confidential handling of the Confidential Information.

**10.4 REMEDIES.** Each Party acknowledges that a breach of this Agreement adversely affecting a Party's Intellectual Property Rights (e.g. in the Software or Confidential Information) may cause irreparable harm or injury to such Party for which there may be no adequate remedy at law, and that under such circumstances, the applicable Party shall be entitled to equitable relief by injunction or otherwise in any court having jurisdiction, without the obligation of posting any bond or surety.

**10.5 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION.** Upon termination or expiration of this Agreement or promptly upon request, each Party will return all Confidential Information of the other Party (together with any copies thereof), or, at the option of the Disclosing Party, provide written certification of the destruction thereof, provided that the Receiving Party may retain one copy of Disclosing Party's Confidential Information, in the confidential, restricted access files of its legal department for use only to prove compliance with the terms of this Agreement.

**10.6 SURVIVAL.** Receiving Party's duties with respect to Confidential Information under Agreement will expire five (5) years after the termination or expiration of this Agreement (except for Trade Secrets, which shall remain subject to these restrictions for so long as they constitute Trade Secrets).

## **11. LIMITED WARRANTIES; DISCLAIMERS.**

**11.1 MUTUAL WARRANTIES.** Each Party represents and warrants to the other that: (a) it is and will be duly organized, validly existing in good standing under the laws of its domicile and is and will be in good standing in each jurisdiction in which such qualification is required by law; (b) it has the full power to enter into this Agreement and to perform its obligations and duties hereunder; (c) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable against it; and (d) this Agreement does not contravene, violate or conflict with any other agreement of such Party with any third party.

**11.2 SOFTWARE WARRANTY.** For a period of ninety (90) days from the effective date of the initial Order for the Software, BlackBerry warrants to the Partner that any Commercially Released Software delivered to Partner hereunder will materially conform to its published specifications described in the relevant Documentation when used on a supported referenced platform as specified by BlackBerry in the Documentation which is applicable to the specific type and version of the Software. If the Commercially Released Software delivered fails to meet the forgoing warranty, Partner's sole and exclusive remedy and the entire liability of BlackBerry and its licensors under this warranty, is for BlackBerry to use commercially reasonable efforts to repair or replace the Software or provide a workaround for such problem, or if repair, replacement or a workaround is not possible, to terminate the applicable license and require the removal of the relevant Commercially Released Software from all Partner and Partner Developer systems (if any). Any obligations of BlackBerry under this Section shall not apply to (A) Commercially Released Software provided on an evaluation or trial basis; or (B) if the failure of the Commercially Released Software to perform the material functions described in the Documentation is due to: (i) use of the Software on an unsupported referenced platform; (ii) use of the Software in a manner inconsistent with any of Partner's obligations set out in this Agreement or in a manner inconsistent with the instructions in the Documentation applicable to the specific type and version of the Software; (iii) a malfunction or other problem related to any Third-Party Item; or (iv) any external causes affecting the Software, correction of errors attributable to software other than the Software, or defects due to repairs or modifications not authorized by BlackBerry in writing.

**11.3 GENERAL DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND ALL SERVICES DELIVERED HEREUNDER ARE PROVIDED "AS IS" AND ALL CONDITIONS, ENDORSEMENTS, GUARANTEES, ASSURANCES, REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY AND ALL SOFTWARE AND SERVICES DELIVERED HEREUNDER ARE HEREBY DISCLAIMED AND EXCLUDED, INCLUDING THOSE OF FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY AND TITLE. BLACKBERRY DOES NOT WARRANT OR PROVIDE ANY OTHER SIMILAR ASSURANCE WHATSOEVER OF UNINTERRUPTED OR ERROR-FREE USE OR OPERATION OF THE SOFTWARE, CONTINUED AVAILABILITY OF THE SOFTWARE, THAT ANY SAMPLE PARTNER APPLICATIONS, SAMPLE TARGET SYSTEMS, CONTENT, OR OTHER SYSTEMS OR NETWORKS SHALL BE FREE FROM LOSS OR CORRUPTION OR CONTENT SHALL BE TRANSMITTED WITHIN A REASONABLE PERIOD OF TIME, OR, WHERE RELEVANT TO THE FUNCTIONALITY OF THE SOFTWARE, THAT ANY OR ALL THREATS, VULNERABILITIES, SECURITY ATTACKS OR MALWARE WILL BE DISCOVERED, REPORTED OR REMEDIED. ADDITIONALLY, PARTNER ACKNOWLEDGES AND AGREES THAT WHERE THE SOFTWARE IS DESIGNED TO INTEROPERATE WITH OR FACILITATE PARTNER'S ACCESS TO THIRD-PARTY ITEMS, BLACKBERRY CANNOT ENSURE INTEROPERABILITY AND HAS NO CONTROL OVER THE FUNCTIONALITY OR PERFORMANCE OR NON-PERFORMANCE OF SUCH THIRD-PARTY ITEMS AND MAY NOT BE ABLE TO PROVIDE A FIX OR WORKAROUND FOR A PROBLEM THAT PARTNER IDENTIFIES WITH THE SOFTWARE.

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



**11.5 SPECIFIC DISCLAIMERS WITH RESPECT TO SOFTWARE AND ANY PARTNER DEVELOPMENTS.** PARTNER ACKNOWLEDGES THAT AS BETWEEN THE PARTIES, PARTNER IS SOLELY RESPONSIBLE AND LIABLE FOR ANY FAILURES IN THE OPERATION, PERFORMANCE, RELIABILITY OF SAMPLE PARTNER APPLICATIONS, SAMPLE TARGET SYSTEMS, PARTNER DEVELOPMENT TOOL(S), AND/OR INTEROPERABLE PARTNER PRODUCTS DEVELOPED USING THE SOFTWARE AND FOR ANY BODILY INJURY, PROPERTY DAMAGE OR ANY OTHER INJURY OR DAMAGE CAUSED BY OR ASSOCIATED WITH SAMPLE PARTNER APPLICATIONS, SAMPLE TARGET SYSTEMS, PARTNER DEVELOPMENT TOOL(S), AND/OR INTEROPERABLE PARTNER PRODUCT(S) DEVELOPED USING THE SOFTWARE. THE SOFTWARE IS NOT SPECIFICALLY DESIGNED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION, OR FOR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY OR PROPERTY DAMAGE. THE SOFTWARE IS NOT FAULT-TOLERANT AND THE SOFTWARE MAY CONTAIN ERRORS AND MAY FAIL AND USE OF THE SOFTWARE (INCLUDING RUNTIME SUBSYSTEMS, HEADERS AND LIBRARIES) IN CONNECTION WITH ANY SAMPLE PARTNER APPLICATIONS, SAMPLE TARGET SYSTEMS, PARTNER DEVELOPMENT TOOL(S), AND/OR INTEROPERABLE PARTNER PRODUCT(S) (INCLUDING ANY HIGH RISK APPLICATION) IS DONE AT PARTNER'S SOLE RISK AND LIABILITY. PARTNER, NOT BLACKBERRY, IS SOLELY RESPONSIBLE AND LIABLE TO TEST AND IDENTIFY ANY ISSUES WITH RESPECT TO SAMPLE PARTNER APPLICATIONS, SAMPLE TARGET SYSTEMS, PARTNER DEVELOPMENT TOOL(S), AND/OR INTEROPERABLE PARTNER PRODUCT(S) DEVELOPED (INCLUDING RUNTIME SUBSYSTEMS INCLUDED IN SAMPLE PARTNER APPLICATION(S) AND SAMPLE TARGET SYSTEMS). BLACKBERRY EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION OF FITNESS FOR SOFTWARE USE IN CONNECTION WITH ANY HIGH-RISK APPLICATIONS.

## **12. INDEMNITY.**

Partner shall indemnify, hold harmless, and if requested by BlackBerry, defend BlackBerry and its Affiliates and their successors and assigns and their respective directors, officers, employees, independent contractors and agents from and against any and all claims, proceedings, liabilities, losses, damages, costs and expenses (including reasonable legal fees and expenses) arising out of or in connection with (a) any breach of this Agreement by Partner its Affiliates and their respective Developers or (b) any Sample Partner Application(s), Sample Target System(s), Partner Development Tool(s), and Interoperable Partner Product(s) and/or related services or offerings. BlackBerry shall give Partner prompt written notice of any claim or proceeding. If BlackBerry has requested Partner to defend a claim or proceeding: (i) BlackBerry may at its option and expense participate in its defense or settlement; (ii) Partner shall not settle it in a manner that requires BlackBerry or any of its Affiliates to admit any liability; and (iii) if BlackBerry later has a reasonable basis to believe that Partner cannot or may not be able to fulfill its obligations under this subsection (a), then, without limiting Partner's obligations hereunder, BlackBerry shall be entitled to provide Partner with notice of its decision to defend the claim or proceeding, and thereafter to assume control of its defense and/or settlement.

## **13. LIMITATION ON LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

(A) IN NO EVENT SHALL BLACKBERRY AND/OR ITS AFFILIATES AND/OR SUPPLIERS BE LIABLE FOR, AND PARTNER ON ITS OWN BEHALF, AND ON BEHALF OF ITS DEVELOPERS, HEREBY WAIVES ALL OF THE FOLLOWING DAMAGES DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE OR ANY RELATED SERVICES, SAMPLE PARTNER APPLICATION(S), SAMPLE TARGET SYSTEMS, PARTNER DEVELOPMENT TOOL(S), AND/OR INTEROPERABLE PARTNER PRODUCT(S) DEVELOPED IN PART OR WHOLE USING THE SOFTWARE: (I) ALL INDIRECT, ECONOMIC, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL AND PUNITIVE DAMAGES; (II) ALL DAMAGES FOR LOST PROFITS, REVENUE OR EARNINGS, LOST OR CORRUPTED DATA, BREACHES OF DATA SECURITY, DELAYS OR FAILURE TO TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION, FAILURE TO REALIZE EXPECTED SAVINGS AND COST OF SUBSTITUTE SOFTWARE OR SERVICES; AND (III) ALL DAMAGES RELATED TO OR ARISING OUT OF ANY THIRD-PARTY ITEMS, ANY PARTNER FURNISHED GOODS, SOFTWARE, SERVICES OR CONTENT; AND

(B) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF BLACKBERRY TO PARTNER, DEVELOPERS, OR TO ANY THIRD PARTY CLAIMING THROUGH THEM FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT EXCEED FIVE THOUSAND U.S. DOLLARS (\$5,000.00); AND

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THIS AGREEMENT SHALL APPLY: (I) WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTORY LIABILITY OR ANY OTHER THEORY OF LIABILITY; (II) WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR POSSIBILITY HAS BEEN DISCLOSED TO BLACKBERRY; AND (III) TO BLACKBERRY, ITS AFFILIATES, AND THEIR RESPECTIVE SUPPLIERS, SUCCESSORS AND ASSIGNS.

## **14. MISCELLANEOUS.**

**14.1 DEVELOPER LICENSING INFORMATION.** In order to install and/or activate the Software, certain machine-specific information as well as personal information about the Developer and the systems used by the Developer ("**Developer Licensing Information**") is sent to BlackBerry at the time of installation and/or activation and/or periodically thereafter. Developer Licensing 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 hardware and/or identification numbers related to host operating systems. BlackBerry may use Developer Licensing Information to improve its products or services, for the purposes of verifying compliance with the terms and conditions of this Agreement, enforcing any reporting or audit-related provisions in this Agreement, and verifying compliance with the terms and conditions of any other agreements between Partner and BlackBerry relating to Software provided by or on behalf of BlackBerry.

**14.2 PRIVACY.** To the extent Partner's and/or its Developers' installation, access to and/or use of the Software or access or use of services delivered under this Agreement results in the collection, use, processing, transfer, storage, and disclosure (collectively "Process" or "Processing") of personally identifiable information and content related to Partner and/or its Developers by BlackBerry and/or any of its Affiliates and their service providers, such information will be Processed in compliance with in BlackBerry's Privacy Policy, as may be amended from time-to-time by BlackBerry and which is incorporated herein by this reference, the current version of which can be viewed at [www.BlackBerry.com/legal](http://www.BlackBerry.com/legal). Partner represents and warrants, on its own behalf and on behalf of its Developers, that it has obtained all necessary consents to such Processing, including collection of Developer's personal information as required for the use of the Software or services as contemplated in this Agreement.

**14.3 PRESERVATION OF RIGHTS.** PARTNER AGREES NOT TO DIRECTLY OR INDIRECTLY GRANT, OR PURPORT TO GRANT, TO ANY PARTY ANY RIGHTS OR IMMUNITIES UNDER BLACKBERRY'S OR ITS LICENSORS' INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE THAT WOULD SUBJECT SUCH INTELLECTUAL PROPERTY TO AN OSS 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.

**14.4 PATENT NON-ASSERT.** PARTNER AGREES THAT PARTNER WILL NOT, AND WILL NOT ASSIST, PERMIT OR ENABLE ANY OTHER PARTY (INCLUDING ANY DEVELOPER OR AFFILIATE) TO USE SOFTWARE SOURCE CODE OR ANY OTHER BLACKBERRY 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, PARTNER ALSO AGREES THAT PARTNER 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 BLACKBERRY CONFIDENTIAL INFORMATION, OR ANY PART THEREOF; AND IN THE CASE OF (I) AND (II), AGAINST BLACKBERRY 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 FIELDDED), 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 BLACKBERRY OR BLACKBERRY AFFILIATE PRODUCT OR BLACKBERRY OR BLACKBERRY AFFILIATE SERVICE FOR THE FULL-LIFE OF SUCH PATENTS.

ALL OBLIGATIONS CONTAINED IN THIS SECTION 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 SHALL BE NULL AND VOID.

**14.5 APPLICABLE BLACKBERRY ENTITY.** Where the Order is through BlackBerry and Partner's primary address is located in:

- a) Canada, Caribbean, South America, or any other region or country not listed in subsections (b) - (d) inclusive below: "BlackBerry" means BlackBerry Limited;
- b) United States of America: "BlackBerry" means BlackBerry Corporation;
- c) Europe, the Russian Federation, Middle East or Africa: "BlackBerry" means BlackBerry UK Limited; and
- d) Asia-Pacific (including Pakistan and Kazakhstan): "BlackBerry" means BlackBerry Singapore Pte. Limited.

Where the Order is through QNX Software Systems Limited: "BlackBerry" means QNX Software Systems Limited

**14.6 APPLICABLE LAW AND JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada excluding conflicts of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods. Each party irrevocably consents and submits to the exclusive jurisdiction of the courts of the city of Toronto, Ontario, and waives any objection thereto on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law. The parties waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

**14.7 FORCE MAJEURE.** Neither Party shall be liable for its failure to perform or the delayed performance of its obligations if such failure results from circumstances beyond the affected Party's reasonable control, including third-party acts or disablements, pandemics and any law or governmental order, rule, regulation or direction.

**14.8 INJUNCTIVE RELIEF.** Notwithstanding anything to the contrary, the Parties agree that Partner's or any of Partner Developers' breach of certain terms of this Agreement may cause irreparable harm to BlackBerry and/or its Affiliates for which damages shall be an inadequate remedy and BlackBerry may therefore seek injunctive or equitable relief in any court of competent jurisdiction without the requirement of posting a bond, in addition to all other remedies available to it.

**14.9 COMPLIANCE WITH LAWS, EXPORT CONTROL AND U.S. GOVERNMENT USERS.** Partner agrees that the Software shall not be exported, imported, used, transferred, or re-exported except in compliance with the applicable laws and regulations of the relevant government authorities. Partner represents and covenants that: (i) Partner and Partner Developers are eligible to receive and/or access the Software under applicable law; and (ii) Partner shall ensure that its receipt and use of and/or access to the Software, or that of its Developers, is in accordance with the restrictions in

this subsection. If any part of the Software is being licensed by the U.S. government, including any U.S. federal agency, the Software is considered access to commercial computer software and documentation developed exclusively at private expense and the Software is provided as a “commercial item” as that term is defined in FAR 2.101 (and as it is defined and used in all corresponding agency specific Federal Acquisition Regulation supplements) and is provided with only those rights specified in this Agreement.

**14.10 ASSIGNMENT.** BlackBerry may assign this Agreement with notice to Partner. Partner shall not assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of BlackBerry and any assignment in breach of this provision shall be void and of no effect. BlackBerry may perform its obligations under this Agreement directly or may have some or all of its obligations performed by any Affiliate, contractor, subcontractor, services provider or third party.

**14.11 NOTICES.** Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and delivered by hand or sent by registered mail or courier, effective on the date of receipt, addressed as follows: if to Partner, at the address supplied to BlackBerry by Partner and, if to BlackBerry, addressed to BlackBerry Limited at 2200 University Avenue East, Waterloo, Ontario, Canada N2K 0A7, Attention: Legal Department. A Party may from time-to-time change its address by notice in writing to the other Party delivered hereunder. In addition, BlackBerry may at its option deliver the foregoing notice or other communication to an e-mail address provided by Partner to BlackBerry for delivery of the License Certificate, which shall be effective and deemed delivered when transmitted, and if Partner has provided BlackBerry with no such address, notice may be duly given when prominently posted on the Software Center and the Developer Web Portal and Partner should regularly visit the site to review such notices.

**14.12 THIRD-PARTY BENEFICIARIES.** The provisions of this Agreement are for the benefit of Partner and BlackBerry and not for any other person or entity, whether under statute or otherwise, except for BlackBerry’s Affiliates and suppliers of BlackBerry and its Affiliates.

**14.13 ENTIRE AGREEMENT; MODIFICATIONS.** This Agreement (including the terms incorporated by reference, e.g. the Maintenance & Support Policy, License Certificate, OSS Licenses and the Third-Party Licensing Considerations Supplement) is the complete agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements and understandings between the Parties applicable to the Software and Maintenance and Support services. The provisions of this Agreement will prevail in the event of a conflict between any of its terms and conditions and the provisions of the License Certificate(s), or Third-Party Licensing Considerations Supplement, or any inconsistent or additional terms or conditions of any related purchase orders or invoices whenever issued or received. This Agreement may be modified by a written document executed by the Parties. Except to the extent expressly precluded by applicable law, BlackBerry also reserves the right to modify this Agreement, including to reflect changes in law or business practices. Notwithstanding any other notice requirement, BlackBerry shall notify Partner of the change by a reasonable means of notice, including posting the revised Agreement at the Software Center and the Developer Web Portal (and or at links posted therein), and Partner should regularly visit the site to review the most current version of this Agreement. Partner agrees that its continued use of the Software after the changes becomes effective shall constitute Partner’s acceptance of the revised Agreement. If there is any inconsistency between this Agreement and any Documentation used with the Software, the provisions of this Agreement shall apply to the extent of the inconsistency.

**14.14 INTERPRETATION AND LANGUAGE.** Headings are inserted herein for convenience only and do not form part of this Agreement. As used herein: (i) “days” means calendar days; (ii) “include” and “including” are not limiting; and (iii) use of Software shall be deemed to include active or inactive use. If this Agreement is translated into a language other than English, the English version shall prevail to the extent that there is any conflict or discrepancy in meaning between the English version and any translation thereof. Where Partner’s primary address is located in Quebec, it is the express will of the Parties that this Agreement and all related documents be drawn up in English. C’est la volonté expresse des Parties que la présente convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.

**14.15 NO WAIVER.** The waiver by either Party of any right provided under this Agreement must be in writing signed by such Party and any waiver shall not constitute a subsequent or continuing waiver of such right or of any other right under this Agreement.

**14.16 SEVERABILITY.** If any section, provision or part thereof of this Agreement is held to be illegal, invalid or unenforceable by a court of competent authority in any jurisdiction, that section, provision or part shall be limited if possible and only thereafter severed to the extent necessary to render this Agreement valid and enforceable in such jurisdiction.

**14.17 MARKETING AND PROMOTION.** From time-to-time, BlackBerry lists and/or mentions its Partners in its marketing and communications initiatives. Partner agrees that BlackBerry may use Partner’s name and logo worldwide, free of charge for such purpose for the duration of the Term. In addition, subject to applicable privacy law and BlackBerry’s Privacy Policy, Partner expressly consents to BlackBerry contacting the Partner for marketing or promotional purposes.

BB\_QNX\_Development\_License\_Partner\_License\_Class\_v2\_2023-01-26

**Exhibit A**

**1. USE OF SOFTWARE IN A CLOUD COMPUTING ENVIRONMENT (“CLOUD COMPUTING LICENSE”)**

1.1 Subject to the payment of the applicable fees to the Authorized Cloud Service Provider(s) and the terms and conditions in this Agreement, BlackBerry grants to Partner, under BlackBerry’s Intellectual Property Rights, a non-exclusive, non-transferable Cloud Computing License to:

- (i) use the Cloud Target System Image in a Cloud Computing Environment as a Sample Target System;
- (ii) use, produce and distribute Derivative Cloud Target System Images. Partner may only use Derivative Cloud Target System Images created or derived from the Cloud Target System Image that has been provided by BlackBerry;

each of (i) and (ii) only for Development Purposes and only in the Cloud Computing Environment provided by an Authorized Cloud Services Provider. For that portion of the Cloud Target System Image that is “Commercially Released Software”, standard Maintenance and Support is included at no additional charge.

1.2 **Specific Restrictions Applicable to Cloud Computing Licenses.** The following requirements, restrictions, and limitations apply:

- (i) In order to use the Cloud Target System Image and/or Derivative Cloud Target System Image, Partner must have at least one valid, supported Partner License and at least one valid Project License for those products licensed on a project basis (in the case where Partner intends to use the Cloud Target System Image that is based on a product licensed on a project basis);
- (ii) Partner may not use the Software to generate, or otherwise generate and/or procure an alternative Cloud Target System Image;
- (iii) Partner may only use the Cloud Target System Image and/or Derivative Cloud Target System Image in Cloud Computing Environments provided by Authorized Cloud Service Providers and such Authorized Cloud Services Providers may impose additional terms and conditions governing their provision of the cloud services;
- (iv) Distribution of the Derivative Cloud Target System Image is only allowed by sharing privately on an Authorized Cloud Services Provider’s site and not through a public listing or otherwise;
- (v) Partner is responsible for payment of any fees charged or collected by Authorized Cloud Service Providers;
- (vi) Partner acknowledges and agrees that BlackBerry shall have no liability with regard to the products and/or services provided by Authorized Cloud Service Providers; and
- (vii) BlackBerry reserves the right to terminate the Cloud Computing Environment offering and any associated license at any time in its sole discretion.

1.3 Nothing herein prohibits Partner from using Software in a Cloud Computing Environment provided such use is otherwise licensed herein and is limited to the IDE and other developer tools, including certain compiling, file editing, source modeling, debugging, profiling, and other developer tools.