

End user licence agreement ("EULA") for BSP Binary Evaluation Use

By accepting delivery in electronic form of the Software, as defined herein, you, the Licensee, accept the terms of this agreement.

1. Definitions

1.1 "**Confidential Information**" means software and information as defined in Section 8.

"**Force Majeure Event**" means an event, or a series of events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, including copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, and rights in designs

"**Licensor**" means Direct Insight Limited, a Company registered in London and having its principal place of business at The Hayloft, Greatworth Hall, Greatworth, OX17 2DH, UK.

"**Named Product**" means a single, distinct product developed and supplied by the Licensee to its customers, whose name is disclosed to the Licensee for the purpose of this agreement.

"**Services**" means any services that the Licensor provides to the Licensee,

"**Supported Hardware**" means the specific circuit board or module containing processor memory and other components on which the Licensee wishes to use QNX

"**QNX**" means the QNX Neutrino Operating System which is licensed on a under separate agreement by QSS

"**QSS**" means QNX Software Systems Limited, a company incorporated in the Province of Ontario and having its principal place of business at 1001 Farrar Road, Ottawa, Ontario, K2K 0B3 Canada.

"**Software**" means the collection of binary code which together forms a reference Board Support Package (BSP), allowing QNX to be used with the Supported Hardware, and which may contain a combination of elements owned by the Licensor, and elements owned by QSS and which the Licensor has the right to include.

"**Software Defect**" means a defect, error or bug in the Software as supplied which may have an adverse effect on the operation of the Software

"Source Code" means computer code in human-readable form, as expressed in a programming language.

3. Term

- 3.1 This EULA shall come into force upon delivery of the Software.
- 3.2 This EULA shall continue in force indefinitely.

4. Licence

- 4.1 The Licensor hereby grants to the Licensee the right to use the Software which is supplied as binary code, for the purpose of evaluation and experimentation only. For the avoidance of doubt, the Software is not provided as suitable for production use or for inclusion in the Licensees end-products.
- 4.2 The Licensee fully accepts that this is sample code, intended to provide a starting point, and to permit experimentation with and demonstration of the functions of QNX on the Supported Hardware. It is neither intended to be complete, suitable for production use, nor to perform any particular function to any agreed standard.
- 4.3 Where the Software has been said to offer or support a particular interface or function, no promise or warranty is offered that the operation of that interface or function will meet particular standards – including generally accepted minimum performance standards for that interface or function - and the Licensee accepts that further work may be required to achieve satisfactory operation.
- 4.4 The User may not sub-license and must not purport to sub-license any rights granted under Clause 4.1 without the prior written consent of the Licensor and QSS.
- 4.5 Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:
 - (a) the Licensee must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software or elements of the Software whether as Source Code or binary, whether modified or intact.
 - (b) the Licensee must use, reproduce, distribute, host or sublicense the Software or any part of the software except according to the limited licence rights expressly granted in this agreement.
 - (c) the Licensee must not alter, remove, or cover any proprietary or licensing notice(s) in or on any part of the Software
 - (d) the Licensee shall not utilize the Software in a manner that could subject it to an open source licence, encumbrance or scheme.
- 4.6 The Licensee shall comply with all applicable laws, ordinances, codes, regulations and policies applicable to the receipt, distribution, use of and/or access to the Software;

- 4.7 The Licensee shall only use the Software with a properly licensed QNX Development System.
- 4.8 The Licensee shall not permit its customers or any other third party to modify, reverse-engineer, decompile, recompile, or further distribute the Software or the derived binaries or any part thereof.

5. Support Services

- 5.1 The Licensor shall provide Support Services to the Licensee at its entire discretion. No minimum standard, time or effort is offered, implied or included in this agreement.

6. No assignment of Intellectual Property Rights

- 6.1 Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights or title in the Software or parts thereof from QSS or the Licensor to the Licensee.

7. Charges

- 7.1 The Licensee shall pay any Charges to the Licensor in accordance with this EULA.
- 7.2 All amounts stated in or in relation to this EULA are, unless the context requires otherwise, exclusive of any applicable value added taxes or duties, which may be added to those amounts and payable by the Licensee to the Licensor or may become due according to local laws, in which case the Licensee shall be liable for payment.
- 7.3 If the User does not pay any amount properly due to the Licensor under this EULA, the Licensor may, in addition to the provisions of the Licensor's Terms of Business, withdraw the rights conferred by this Agreement without notice.

8. Confidentiality

- 8.1 "Confidential Information" will mean all licensed Software and associated documentation under this agreement, and any related information.
- 8.2 The Licensee acknowledges that any Confidential Information received is a valuable trade secret, confidential and proprietary information of the Licensor or QSS and essential to the success of disclosing party's business, and that its rights in the information depend on its non-disclosure.
- 8.3 Licensee agrees to not copy, reproduce or use Confidential Information other than for the purpose described in this agreement unless specifically authorized to do so in writing by the owner thereof
- 8.4 Licensee agrees to disclose such Confidential Information only to (i) those of its employees and subcontractors who require knowledge of the and (ii) such other persons or entities as the disclosing party may authorize in writing, provided that the receiving party requires such employees and other authorized persons or entities to maintain the confidentiality of the Confidential Information and otherwise comply with the terms of this Agreement.

- 8.5 Licensee agrees to keep Confidential Information confidential and under access and use restrictions sufficient to prevent copying, use or disclosure which violates this Agreement. Such restrictions will be at least as stringent as those applied by the Licensee to its most valuable confidential and proprietary information.
- 8.6 Licensee shall not remove, obscure or alter any notice of patent, copyright, trade secret, authorship or other proprietary right from the other party's Confidential Information without the disclosing party's prior written authorization.

9. Warranties

- 9.1 The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.
- 9.2 The Licensor warrants to the User that the Software, when used by the Licensee in accordance with this EULA, will not breach any laws, statutes or regulations applicable under English law.
- 9.3 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person.
- 9.4 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's Intellectual Property Rights, the Licensor may acting reasonably at its own cost and expense:
- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property; or
 - (b) procure for the User the right to use the Software in accordance with this EULA.
- 9.5 The Licensee warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.
- 9.6 All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

10. Acknowledgements and warranty limitations

- 10.1 The Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 10.2 The Licensee acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

11. Indemnities

11.1 The Licensor shall indemnify and shall keep indemnified the User against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the User and arising directly or indirectly as a result of any breach by the Licensor of this (a "**Licensor Indemnity Event**").

11.2 The Licensee must:

- (a) upon becoming aware of an actual or potential Licensor Indemnity Event, notify the Licensor;
- (b) provide to the Licensor all such assistance as may be reasonably requested by the Licensor in relation to the Licensor Indemnity Event;
- (c) allow the Licensor the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Licensor Indemnity Event; and
- (d) not admit liability to any third party in connection with the Licensor Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Licensor Indemnity Event without the prior written consent of the Licensor,

and the Licensor's obligation to indemnify the User under Clause 11.1 shall not apply unless the User complies with the requirements of this Clause 11.2].

11.3 The User shall indemnify and shall keep indemnified the Licensor against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Licensor and arising directly or indirectly as a result of any breach by the Licensee of this EULA .

11.4 The indemnity protection set out in this Clause 11 shall be subject to the limitations and exclusions of liability set out in this EULA

12. Limitations and exclusions of liability

12.1 Nothing in this EULA will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law,

12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in this EULA:

- (a) are subject to Clause 12.1; and
- (b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

- 12.3 The Licensor and QSS will not be liable to the User in respect of any losses arising out of a Force Majeure Event.
- 12.4 The Licensor and QSS will not be liable to the User in respect of any loss of profits or anticipated savings.
- 12.5 The Licensor and QSS will not be liable to the User in respect of any loss of revenue or income.
- 12.6 The Licensor and QSS will not be liable to the User in respect of any loss of business, contracts or opportunities.
- 12.7 The Licensor and QSS will not be liable to the User in respect of any loss or corruption of any data, database or software.
- 12.8 The Licensor and QSS will not be liable to the User in respect of any special, indirect or consequential loss or damage whatsoever including but not limited to lost revenue, profits or earnings, lost or damaged data or breaches of data security, business interruption, failure to realize expected savings, or other commercial or economic loss, arising out of or relating to any use or inability to use the Software even if Licensor / QSS has been advised of the possibility of such damage or claim and whether or not such damages could reasonably be foreseen
- 12.9 The liability of the Licensor and QSS to the User under this EULA in respect of any event or series of related events shall not exceed the total amount paid and payable by the Licensee to the Licensor under this EULA, excluding any fees for services or additional work of any kind.

13. Termination

- 13.1 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of this EULA, and the breach is not remediable;
 - (b) the other party commits a material breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied;
- 13.2 The Licensor may terminate this EULA immediately by giving written notice to the User if:
- (a) any amount due to be paid by the User to the Licensor under this EULA is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
 - (b) the Licensor has given to the User at least 30 days' written notice, following the failure to pay, of its intention to terminate this EULA in accordance with this Clause 13.2.

14. Effects of termination

- 14.1 Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Sections 1, 4.1, 8, 11, 12, 14, 15 and 16].
- 14.2 Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.
- 14.3 Within 30 days following the termination of this EULA for any reason:
the User must pay to the Licensor any Charges in respect of Services provided to the User before the termination of this EULA and in respect of licences in effect before the termination of this EULA
- 14.4 For the avoidance of doubt, the licences of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.
- 14.5 Within 10 Business Days following the termination of this EULA, the User must:
- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
 - (b) irrevocably delete from all computer systems in its possession or control all copies of the Software.

15. General

- 15.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 15.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 15.3 This EULA may not be varied except by a written document signed by or on behalf of each of the parties.
- 15.4 The Licensee hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to any successor to all or a substantial part of the business of the Licensor from time to time. The Licensee must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the Licensee's contractual rights or obligations under this EULA.
- 15.5 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.
- 15.6 Subject to Clause 14.1, this EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous

agreements, arrangements and understandings between the parties in respect of that subject matter.

15.7 This EULA shall be governed by and construed in accordance with English law.

15.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

16. Interpretation

16.1 In this EULA, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

16.2 The Clause headings do not affect the interpretation of this EULA.

16.3 In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.