

# Specification License

## RTSJ 2.0 SPECIFICATION LICENSE AGREEMENT

AICAS GmbH IS WILLING TO LICENSE THIS SPECIFICATION TO YOU ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY. BY DOWNLOADING THIS SPECIFICATION, YOU ACCEPT THE TERMS AND CONDITIONS OF THE AGREEMENT. IF YOU ARE NOT WILLING TO BE BOUND BY IT, DECLINE THIS AGREEMENT AND DO NOT DOWNLOAD THE SPECIFICATION.

### I DEFINITIONS

For the purposes of this Agreement,

- A. *Independent Implementation* shall mean an implementation of the Specification that neither derives from any of aicas's source code or binary code materials nor, except with an appropriate and separate license from aicas, includes any of aicas's source code or binary code materials
- B. *Licensor Name Space* shall mean the public class or interface declarations whose names begin with "javax.realtime", "com.jamaicavm", and "com.aicas" or their equivalents in any subsequent naming convention adopted by aicas through the Java Community Process, or any recognized successors or replacements thereof, and
- C. *Technology Compatibility Kit* shall mean the test suite and accompanying TCK User's Guide provided by aicas which corresponds to the Specification and that was available either (i) from aicas 120 days before the first release of Your Independent Implementation that allows its use for commercial purposes, or (ii) more recently than 120 days from such release but against which You elect to test Your implementation of the Specification. This Agreement will terminate immediately without notice from aicas if you breach the Agreement or act outside the scope of the licenses granted above.

### II LIMITED LICENSE GRANTS

- A. License for Evaluation Purposes.

aicas hereby grants you a fully-paid, perpetual, nonexclusive, nontransferable, worldwide, limited license (without the right to sublicense), under aicas's applicable intellectual property rights to view, download, use and reproduce the Specification only for the purpose of internal evaluation. This includes developing applications intended to run on an implementation of the Specification provided that such applications do not themselves implement any portion(s) of the Specification.

- B. License for the Distribution of Compliant Implementations.

aicas also grants you a perpetual, nonexclusive, nontransferable, worldwide, fully paid-up, royalty free, limited license (without the right to sublicense) under any applicable copyrights or, subject to the provisions of subsection 4 below, patent rights it may have covering the Specification to create and/or distribute an Independent Implementation of the Specification

that (a) fully implements the Specification including all its required interfaces and functionality; (b) does not modify, subset, superset or otherwise extend the Licensor Name Space, or include any public or protected packages, classes, Java interfaces, fields or methods within the Licensor Name Space other than those required/authorized by the Specification or Specifications being implemented; (c) only includes as part of such implementation, the packages, classes or methods specified by the Specification; and (d) passes the Technology Compatibility Kit (including satisfying the requirements of the applicable TCK Users Guide) for such Specification (an implementation that satisfies (a) through (d), a Compliant Implementation). In addition, the foregoing license is expressly conditioned on your not acting outside its scope. No license is granted hereunder for any other purpose (including, for example, modifying the Specification, other than to the extent of your fair use rights, or distributing the Specification to third parties). Also, no right, title, or interest in or to any trademarks, service marks, or trade names of aicas or aicas's licensors is granted hereunder. Java, and Java related logos, marks and names are trademarks or registered trademarks of Oracle, Inc. in the U.S. and other countries. JamaicaVM, aicas, and related logos, marks and names are trademarks or registered trademarks of aicas GmbH. in Germany and other countries.

#### C. Pass-through Conditions.

You need not include limitations (a)-(d) from the previous paragraph or any other particular "pass through" requirements in any license You grant concerning the use of your Independent Implementation or products derived from it. However, except with respect to Independent Implementations (and products derived from them) that satisfy limitations (a)-(d) from the previous paragraph, You may neither (a) grant or otherwise pass through to your licensees any licenses under aicas's applicable intellectual property rights; nor (b) authorize your licensees to make any claims concerning their implementation's compliance with the Specification in question.

#### D. Reciprocity Concerning Patent Licenses.

With respect to any patent claims covered by the license granted under subparagraph 2 above that would be infringed by all technically feasible implementations of the Specification, such license is conditioned upon your offering on fair, reasonable and nondiscriminatory terms, to any party seeking it from You, a perpetual, nonexclusive, nontransferable, worldwide license under Your patent rights which are or would be infringed by all technically feasible implementations of the Specification to develop, distribute and use a Compliant Implementation in accordance with the terms of subparagraph 2 above.

With respect to any patent claims owned by aicas and covered by the license granted under subparagraph 2, whether or not their infringement can be avoided in a technically feasible manner when implementing the Specification, such license shall terminate with respect to such claims if You initiate a claim against aicas that it has, in the course of performing its responsibilities as the Specification Lead, induced any other entity to infringe Your patent rights.

Also with respect to any patent claims owned by aicas and covered by the license granted under subparagraph 2, where the infringement of such claims can be avoided in a technically feasible manner when implementing the Specification such license, with respect to such claims, shall terminate if You initiate a claim against aicas that its making, having made,

using, offering to sell, selling or importing a Compliant Implementation infringes Your patent rights.

### **III DISCLAIMER OF WARRANTIES**

THE SPECIFICATION IS PROVIDED “AS IS”. AICAS MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT (INCLUDING AS A CONSEQUENCE OF ANY PRACTICE OR IMPLEMENTATION OF THE SPECIFICATION), OR THAT THE CONTENTS OF THE SPECIFICATION ARE SUITABLE FOR ANY PURPOSE. This document does not represent any commitment to release or implement any portion of the Specification in any product. In addition, the Specification could include technical inaccuracies or typographical errors.

### **IV LIMITATION OF LIABILITY**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT WILL AICAS OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUE, PROFITS OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED IN ANY WAY TO YOUR HAVING, IMPELEMENTING OR OTHERWISE USING THE SPECIFICATION, EVEN IF AICAS AND/OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. You will indemnify, hold harmless, and defend aicas and its licensors from any claims arising or resulting from: (i) your use of the Specification; (ii) the use or distribution of your Java application, applet and/or implementation; and/or (iii) any claims that later versions or releases of any Specification furnished to you are incompatible with the Specification provided to you under this license.

### **V RIGHTS LEGEND**

U.S. Government: If this Specification is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government’s rights in the Software and accompanying documentation shall be only as set forth in this license; this is in accordance with 48 C.F.R. 227.7201 through 227.7202-4 (for Department of Defense (DoD) acquisitions) and with 48 C.F.R. 2.101 and 12.212 (for acquisitions other than from the DoD).

### **VI REPORT**

If you provide aicas with any comments or suggestions concerning the Specification (“Feedback”), you hereby (i) agree that such Feedback is provided on a nonproprietary and nonconfidential basis, and (ii) grant aicas a perpetual, nonexclusive, worldwide, fully paid-up, irrevocable license, with the right to sublicense through multiple levels of sublicensees, to incorporate, disclose, and use without limitation the Feedback for any purpose.

## **VII EXPORT**

You shall not export or import the Specification in violation of any applicable German laws or regulations, including German export regulations, and similar laws and regulations of other applicable jurisdictions.

## **VIII GENERAL**

This agreement shall be governed for all purposes by the laws of Federal Republic of Germany. You expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this agreement. Any action or proceeding arising out of this agreement shall fall under the jurisdiction of Federal Court of Karlsruhe, Germany. This agreement contains the entire agreement and understanding between You and aicas. This agreement may not be modified or appended except as agreed to in writing by aicas and You. Such modifications by aicas shall become effective when the modified agreement is posted on aicas' website. No waiver by either party of any rights under this agreement will be effective unless such waiver is in a writing signed by the party against whom enforcement is sought. If any provision of this agreement is declared void, such provision will be deemed severed from this agreement, which will otherwise remain in full force and effect.

Form ID#\_\_\_\_\_

## **IX Specification License Agreement Copyright**

Copyright ©2012–2016 aicas GmbH. All rights reserved.

# Technical Compatibility Kit License

## RTSJ TCK LICENSE AGREEMENT

This TCK Agreement (the “Agreement”) is entered into as of the Effective Date set forth below (the “Effective Date”), by and between

aicas GmbH, (“aicas”)

with its principal place of business at

Emmy-Noether-Str. 9  
D-76131 Karlsruhe, Germany

and

\_\_\_\_\_, (“Licensee”)

with a place of business at

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### I RECITALS

WHEREAS, aicas, is the Maintenance Lead for the Specification (as defined below) and desires to license the Technology Compatibility Kit (as defined below) developed for such Specification to allow third parties to test Products (as defined below) for compatibility with the Specification;

WHEREAS, Licensee wishes to develop and distribute Products that are compatible with the Specification; and

WHEREAS, subject to the terms and conditions of this Agreement, Licensee desires to license the Technology Compatibility Kit (TCK) from aicas to allow Licensee to test Products for compatibility with the Specification.

NOW THEREFORE, intending to be legally bound hereby, aicas and Licensee agree to the terms herein.

### II DEFINITIONS

- A. “*Confidential Information*” means any information that is disclosed by aicas or Licensee to the other party under the terms of the Agreement for the Exchange of Confidential Information (“AECI”) which may include, without limitation, software designs and code, product specifications and documentation, product plans, and other confidential business information.
- B. “*TCK Test Case*” means any code that is used to demonstrate the correctness of a feature of the specification.
- C. “*TCK Test Harness*” means any code that use used to run and collect the results of the test cases.

- D. “*Current TCK*” for a Licensee Product refers to any update of the TCK for the Current Specification that was released in the 180 days prior to that Licensee Product’s FCS, or if no such TCK was released in that interval it refers to the latest update of that TCK.
- E. “*Current Specification*” for a Licensee Product refers to any version of the Specification that was released through the Java Community Process in the *180 days* prior to that Licensee Product’s FCS, or if no Specification update was released in that interval it refers to the latest version of the Specification.
- F. “*Documentation*” means the materials which aicas provides for use with the TCK, as set forth in Exhibit B. aicas may revise the Documentation during the Term.
- G. “*FCS*” means the first commercial shipment date of a production version of an item.
- H. “*Intellectual Property Rights*” shall mean all forms of legal rights and protections in any country of the world, including all right, title, and interest arising under common and statutory law to all: (i) letters patents, provisional patents, design patents, PCT filings and other rights to inventions or designs; (ii) trade secret and equivalent rights in confidential or proprietary TCK License JSR-282 information and know-how; (iii) copyrights, mask works, moral rights or other literary property or authors rights; (iv) rights regarding trade names, logos, domain names, URLs, trademarks, service marks and other proprietary indicia or addresses and all goodwill associated therewith; (v) any similar, corresponding or equivalent rights relating to intangible intellectual property; and (vi) all applications, registrations, issuances, divisions, continuations, renewals, reissuances and extensions of the foregoing.
- I. “*Java Platform*” refers to one of a set of standard Java run-time environments and associated Java class libraries, such as J2SE, J2EE, J2ME CDC, and J2ME CLDC, as defined through the Java Community Process (JCP). A given TCK may apply unmodified to one Java Platform, e.g., J2SE, J2EE. One TCK license may apply to Licensee Product(s) built on the Java Platform(s) addressed by that specific TCK.
- J. “*Licensed Licensee Product*” means a Licensee Product for which Licensee has paid the applicable TCK license fees for the current year, subsequent term, or up to the cumulative cap(s) set forth in Exhibit A (License Fees).
- K. “*Licensee Modification*” means a modification or enhancement to the TCK made by Licensee pursuant to Section [III.B](#) of this Agreement.
- L. “*Licensee Product*” means, collectively, all implementations and versions of Java virtual machine technology, developed or licensed by or for Licensee, that conform to the Specification, each of which is built on or includes one or more of the Java Platforms addressed by a single TCK, including derivatives, and which may be subsequently renamed or rebranded.
- M. “*Licensors Name Space*” means the public class or interface declarations whose names begin with “`javax.realtime`”, “`com.aicas`”, “`com.jamaicavm`”, or their equivalents in any subsequent naming convention adopted through the Java Community Process, or any recognized successors or replacements thereof.
- N. “*Migration Date*” shall mean 180 days after the final release of the latest available version of the Specification.

- O. “*Product*” means a Licensee Product which (a) fully implements the Specification including all its required interfaces and functionality; (b) does not modify, subset, superset, or otherwise extend the Licensor Name Space, or include any public or protected packages, classes, Java interfaces, fields or methods within the Licensor Name Space other than those required/authorized by the Specification or Specifications being implemented, and (c) passes the unmodified Technology Compatibility Kit (including satisfying the requirements of the applicable TCK Users Guide) for such Specification.
- P. “*Specification*” means the written specification pursuant to the Java Community Process for some aspect of the Java technology as identified in Exhibit A.
- Q. “*Specification License*” means the license offered by aicas for an independent implementation of the specification.
- R. “*Support Services*” mean the services provided by aicas as set forth in Exhibit B.
- S. “*Technology Compatibility Kit*” or “TCK” means aicas’s tool kit and Documentation, associated with the Specification identified in Exhibit A, provided to test whether Licensee’s implementation of the Specification is compliant with the Specification. Each different TCK (e.g., for different Java Platforms) provided to Licensee under this Agreement will incur license fees, up to a cumulative cap on fees paid for each specific TCK and for all such TCK’s.
- T. “*Term*” means the term of the Agreement as set forth in Section [XI.A](#).
- U. “*aicas License*” means a license agreement for the TCK from aicas.
- V. “*Update*” means bug fixes, modifications, variations, enhancements and other revisions incorporated in a version of the TCK which aicas generally distributes to licensees of the TCK as part of Support Services from aicas. All Updates shall be licensed under the terms and conditions of this Agreement.

### III LICENSE GRANTS

- A. *Development License.* aicas hereby grants to Licensee and its subsidiaries and affiliates (collectively “Licensee”) a nontransferable, nonexclusive, world-wide, royalty free, fully paid up license to use the TCK solely for the purpose of testing Licensee Product, alone and/or in combination with other hardware and/or software for compliance with the relevant portions of Specifications. Licensee may not modify or create derivative works of the TCK except as is described in Paragraph [B](#) below. Except with respect to Licensee subcontractors performing work on Licensee’s behalf, Licensee may not distribute copies of the TCK to other parties for any purpose.
- B. *License for Licensee Modifications.* Modification may only be made to tests in the TCK that are agreed to be erroneous and provided back to the Licensee. Changes may only be made to the test harness of the TCK, that are necessary to run the tests of the TCK on a given platform, so long as they do not inhibit proper collection of the test results.
- C. *License for Licensee Modifications.* Licensee hereby grants to aicas, under Licensee’s applicable copyrights, a worldwide, royalty free, paid-up, unlimited license to distribute, sublicense

and otherwise use without restriction any Licensee Modifications to the TCK made by Licensee which Licensee chooses in their sole and absolute discretion to deliver to aicas and identify as Licensee Modifications. Such Licensee Modifications are provided on an “AS IS” basis. aicas may choose to use Licensee Modifications in its sole and absolute discretion.

- D. *License to use Specification Document.* Licensee may use the specification source code under aicas’ copyright to produce licensees Product and its documentation. However, documentation derived from the Specification must not modify the meaning of the Specification with respect to the Realtime Specification for Java’s APIs, semantics, and requirements. It must include the specification license, and it must not be supplied in a way that would reasonably be expected to compete with a printed version of the specification.
- E. *Additional Restrictions.* Licensee may not (a) create derivative works of the TCK, except as set forth in Section III.B; or (b) claim that any version or release of a Licensee Product passes the TCK, and therefore is compatible with the Specification, unless it has passed a version of the TCK that was a Current TCK no more than 180 days prior to the date of for that Licensee Product.
- F. *Superseded Releases.* aicas agrees that the provisions of Section III.E(b) above shall not be understood to prevent Licensee from distributing maintenance releases (a new release of a preexisting Product that implements substantially the same core technologies) of a Product that implemented a prior version of the Specification (“Initial Product”) where such maintenance release implements the same version of the Specification implemented by the Initial Product.
- G. *Testing.* Licensee is responsible, at its own cost, to self-certify that its Product passes the applicable TCK as set forth above. aicas may require Licensee to provide reasonable verification of proper compatibility testing.
- H. *No Other Grant.* This Agreement does not grant to Licensee, by implication or otherwise, any right or license, under any Intellectual Property Rights of aicas, except as expressly provided in this Section III.
- I. *Delivery.* As soon as practicable after the Effective Date, aicas shall deliver to Licensee one (1) copy of TCK and Documentation, and one (1) copy of the Specification source code. In the event any deliverable is already in the possession or custody of Licensee, such item(s) shall, to the extent used in connection with the rights granted in this Section III, be subject to the terms of this Agreement, notwithstanding any pre-existing agreement or understanding between Licensee and aicas with respect to such items.

## IV SUPPORT SERVICES

- A. *Support Services.* During the term of this Agreement, aicas shall provide to Licensee the Support Services as set forth in Exhibit B if ordered by licensee.

## V PAYMENT

- A. *License Fees.* Licensee shall pay to aicas the fees set forth in Exhibit A. All fees, freight, taxes or other amounts payable by Licensee under this Agreement shall be paid within sixty



(60) days of the date of receipt of a valid invoice. The annual support fee shall be due on each anniversary date of the Effective Date for the term of the Agreement at Licensees option.

- B. *Taxes.* The fees and other amounts payable under this Agreement do not include any foreign, federal, state or local sales, use or other similar taxes, however designated, levied against the licensing, delivery or use of the TCK or Support Services provided under this Agreement. Licensee shall pay, or reimburse aicas for, all such taxes imposed on aicas, provided; however, that Licensee shall not be liable for any taxes based on aicas's net income. To the extent Licensee is required by local law to withhold taxes based upon aicas's income, Licensee may deduct from any payments to aicas any income tax or tax of a similar nature (including taxes based on net worth) imposed by any government (TCK License "Government Income Tax") and actually paid by Licensee for the account of aicas, to the extent such Government Income Tax does not exceed the appropriate withholding amount applicable under relevant tax treaties. In the event that Licensee deducts any Government Income Tax from payments owed to aicas, Licensee shall furnish aicas with an official tax receipt or other evidence issued by the taxing authority suitable for aicas to apply for a tax credit.
- C. *Currency.* All amounts referred to in this Agreement are, and all invoices and payments under this Agreement shall be, in Euros.

## **VI NOTICE OF BREACH OR INFRINGEMENT**

*Each party shall notify the other promptly in writing when it becomes aware of any breach or violation of the terms of this Agreement, or when Licensee becomes aware of any potential or actual infringement by a third party of the TCK or aicas's Intellectual Property Rights therein.*

## **VII WARRANTIES**

- A. *Limited Warranty.* aicas represents and warrants that the media, if any, on which the TCK are recorded will be free from defects in materials and workmanship for a period of ninety (90) days after delivery. aicas's sole liability with respect to breach of this warranty is to replace the defective media.
- B. *Disclaimer.* EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS SECTION VII AND VIII, NEITHER aicas NOR ITS LICENSORS MAKE ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN RELATION TO THIS AGREEMENT. aicas AND ITS LICENSORS DO NOT WARRANT THAT THE TCK OR ITEMS DEVELOPED WITH THE USE OF THE TCK WILL OPERATE UNINTERRUPTED OR ERROR FREE. WITHOUT LIMITING THE FOREGOING, aicas EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

## **VIII CONFIDENTIAL INFORMATION AND OWNERSHIP**

- A. *Confidential Information.* All Confidential Information shall be exchanged pursuant to the terms of the AECI and its supplements.

- B. *Ownership; Third Party Notices.* This Agreement is not an agreement of sale, and except for the rights granted herein, no title, patent, copyright, trademark, service mark, trade secret, intellectual property or other ownership rights to the TCK are transferred to Licensee under this Agreement. Both parties shall retain all proprietary marks, legends and patent and copyright notices that appear on the TCK, and Documentation, and all whole or partial copies thereof, delivered by one party to the other, as the case may be, and all whole or partial copies thereof.

## **IX LIMITED INDEMNITY**

- A. *By aicas.* aicas will defend, at its expense, any legal proceeding brought against Licensee, to the extent it is based on a claim that authorized use of the FCS or subsequent production version(s) of the TCK is an infringement of a third party trade secret or a copyright in a country that is a signatory to the Berne Convention, and will pay all damages awarded by a court of competent jurisdiction, or such settlement amount negotiated by aicas, attributable to such claim, provided that Licensee: (a) provides written notice of the claim and any such threatened claim promptly to aicas; (b) gives aicas sole control of the defense and settlement of the claim; (c) provides to aicas, at aicas's expense, reasonable information, assistance and authority to defend; and (d) has not settled such proceeding without aicas's prior written consent.
- B. *Remedies.* Should the TCK, or any portion thereof, become, or in aicas's opinion be likely to become, the subject of a claim of infringement for which indemnity is provided under Section IX.IX, aicas shall, (i) procure for Licensee, at no cost to Licensee, the right to continue to use the TCK, (ii) replace or modify the TCK at no cost to Licensee, to make such noninfringing; or (iii) if neither (i) or (ii) are reasonably practical, terminate the right to use such TCK, and grant Licensee a refund of any unused portion of the annual license fee. (c) *Limitation of Liability.* aicas shall have no liability for any claim based upon: (i) the combination, operation or use of any TCK with equipment, devices or software not supplied by TCK where the claim is avoided when the TCK is not so combined, operated or used with equipment, devices or software not supplied by TCK; (ii) the alteration or modification of the TCK that was made by or on behalf of Licensee; or (iii) the failure by Licensee to use the most current version of the TCK, except as permitted hereunder. (d) *Entire Liability.* This Section IX states the entire liability of aicas with respect to infringement of any intellectual property rights by the TCK and aicas shall have no additional liability with respect to any alleged or proven infringement.

## **X LIMITATION OF LIABILITY**

- A. *EXCEPT FOR THE OBLIGATIONS OF INDEMNIFICATION UNDER THIS AGREEMENT AND FEES DUE BY LICENSEE HEREUNDER, OR A BREACH OR VIOLATION OF SECTION III OR THE AECI, EACH PARTY'S LIABILITY TO THE OTHER FOR CLAIMS RELATING TO OR ARISING FROM THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), BREACH OF WARRANTY OR ANY OTHER LEGAL THEORY, SHALL BE LIMITED TO THE LICENSE FEES PAID BY LICENSEE IN THE INITIAL TERM OR RENEWAL TERM, AS THE CASE MAY BE, IN WHICH SUCH LIABILITY AROSE.*

- B. *EXCEPT FOR THE OBLIGATIONS OF INDEMNIFICATION UNDER THIS AGREEMENT, OR A BREACH OF THE AECl, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE, NO MATTER WHAT THEORY OF LIABILITY, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. For the avoidance of doubt, no portion of fees due under this Agreement shall be deemed to be lost profits.*
- C. *The limitations of liability set forth in this Section X are independent of each other and any limited remedy and shall apply notwithstanding any failure of either section or the essential purpose of any limited remedy. The limitations of liability reflect a deliberate and bargained for allocation of risks between aicas and Licensee and constitute the basis of the parties' bargain, without which aicas and Licensee would not have agreed to the terms and conditions of this Agreement.*

## **XI TERM AND TERMINATION**

- A. *Term.* The Term of this Agreement shall begin on the Effective Date and shall continue for a period of three (3) year unless terminated earlier as provided below ("Initial Term"). Thereafter, the Agreement shall automatically renew for additional one (1) year terms (each a "Renewal Term") unless Licensee provides written notice of its desire to not renew the Agreement to the other party at least thirty (30) days prior to the expiration of the then-current annual term.
- B. *Effect of Expiration.* Upon expiration of this Agreement, Licensee shall be authorized to (a) distribute Product(s) successfully self-certified against the applicable version of the TCK licensed hereunder at the time of expiration, subject to Licensee's continued compliance with this Agreement, and (b) retain one (1) copy of the applicable TCK(s) to support customers having copies of Product(s) distributed by Licensee. All other rights of Licensee shall terminate upon such expiration.
- C. *Termination for Cause.* In the event of any material breach of this License Agreement, the nonbreaching party may terminate this Agreement by giving thirty (30) days' prior written notice to the other party; provided, however, that this Agreement shall not terminate if the other party has cured the breach prior to the expiration of such thirty (30) day period or if the other party has commenced curing a breach which cannot be cured within such thirty (30) day period and continues to do so with reasonable diligence until cured.
- D. *Effect of Termination.* In the event of termination of this Agreement in accordance with Section XI.C, above, Licensee shall promptly: (a) return to aicas all copies of the TCK and other Confidential Information (collectively "aicas Property") in Licensee's possession or control; or (b) permanently destroy or disable all copies of the aicas Property remaining in Licensee's possession or control, except as specifically permitted in writing by aicas; and (c) upon aicas's request, provide aicas with a written statement certifying that Licensee has complied with the foregoing obligations. All rights and licenses granted to Licensee shall terminate upon such termination.

- E. *No Liability for Expiration or Lawful Termination.* Neither party shall have the right to recover damages or to indemnification of any nature, whether by way of lost profits, expenditures for promotion, payment for goodwill or otherwise made in connection with the business contemplated by this Agreement, due to the expiration or permitted or lawful termination of this Agreement. EACH PARTY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM TO COMPENSATION OR INDEMNITY FOR TERMINATION OF THE BUSINESS RELATIONSHIP CONTEMPLATED BY THIS AGREEMENT UNLESS TERMINATION IS IN MATERIAL BREACH OF THIS AGREEMENT.
- F. *Survival.* The parties' rights and obligations under Sections III, V, VII.B, VIII, IX, X, XI, and XII, shall survive expiration or termination of this Agreement, except in the event of termination under Section XI.C, in which case Licensee's rights under Section III shall not survive.

## XII MISCELLANEOUS

- A. *Notices.* All written notices required by this Agreement must be delivered in person or by means evidenced by a delivery receipt and will be effective upon receipt by the persons at the addresses specified below.

aicas

aicas GmbH  
 Emmy-Noether-Str. 9  
 D-76131 Karlsruhe, Germany  
 Attn: Dr. James J. Hunt

*Licensee*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attn: \_\_\_\_\_

Each party shall notify the other party in writing sent to the address above of any changes to the foregoing information.

- B. *Marketing and Press Announcements.* Licensee's initial press announcement concerning execution of this Agreement must be reviewed and approved by aicas prior to its release. Licensee hereby authorizes aicas to include Licensee in a published list of licensees of the specific TCK(s) licensed hereunder.
- C. *Export Compliance.* The rights and obligations of Licensee shall be subject to such German laws and regulations as shall from time to time govern the license and delivery of technology abroad by persons subject to the jurisdiction of the Federal Republic of Germany. Licensee shall not, directly or indirectly, export, reexport or transship the TCK or any parts or copies thereof in such manner as to violate such laws and regulations in effect from time to time.

aicas shall provide Licensee with such information (including export classifications of the TCK) as may reasonably be required for Licensee to comply with its obligations under this Section [XII.C](#).

- D. *Language*. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall be for accommodation only and shall not be binding on the parties to this Agreement. All communications and notices made or given pursuant to this Agreement, and all documentation and support to be provided, unless otherwise noted, shall be in the English language.
- E. *Governing Law*. This Agreement is made under and shall be governed by and construed under the laws of Baden-Württemberg and controlling German law, effect to conflict of laws principles thereof which would result in the application of the laws of another jurisdiction. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement and further agree that the state and federal courts sitting in Karlsruhe, Federal Republic of Germany shall have proper and exclusive jurisdiction and venue for any proceedings arising from this Agreement.
- F. *Entire Agreement*. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. No amendment to, or any waiver of any rights under, this Agreement shall be effective unless signed in writing by the party to be charged.
- G. *Force Majeure*. Except for obligations to make payments, nonperformance of either party shall be excused to the extent the performance is rendered impossible by strike, fire, flood, war, act of terrorism, governmental acts or orders or restrictions, or any other reason where failure to perform is beyond the reasonable control of, and is not caused by the negligence of the nonperforming party.
- H. *Assignability and Binding Effect*. Neither party shall assign this Agreement, in whole or part, without the other party's prior written consent. For purposes of this section, consent shall not be required in the event that this Agreement is assigned or otherwise transferred by either party pursuant to a sale of all or substantially all of the assets of the assigning party, or otherwise by operation of law including a merger, acquisition or consolidation, or in the case of aicas only, a sale of all or substantially all of aicas' assets relating to the Product. Any assignment of this Agreement in contradiction of this Section [XII.H](#) shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- I. *Headings*. The article and section headings are intended for reference only and do not affect the meaning or interpretation of this Agreement.
- J. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The parties may evidence execution by signing the Agreement and sending by facsimile or email, a copy of the signed original; the parties shall thereafter deliver the executed originals to the other party.
- K. *No Third Party Beneficiaries*. The warranties made by aicas in this Agreement, and the obligations of aicas under this Agreement, run only to Licensee and not to its customers

or any other persons. Under no circumstances shall any other person be considered a third party beneficiary of this Agreement or otherwise be entitled to any rights or remedies under this Agreement.

L. *Interpretation.* Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “but not limited to” and (e) references to “hereunder” or “herein” relate to this Agreement.

M. *Electronic Commerce.* Unless previously submitted by aicas, in order to initiate electronic transfer of payments associated with this Agreement, aicas will complete the attached form entitled “Authorization for Electronic Funds Transfer” and fax the completed form to Licensee’s Accounts Payable at the number included on the form.

**IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives in duplicate, each party taking one original.**

“aicas” \_\_\_\_\_ “Licensee” \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_  
(Print or Type) (Print or Type)

Title \_\_\_\_\_ Title \_\_\_\_\_

Effective Date \_\_\_\_\_

### **XIII EXHIBIT A**

#### A. Description of Specification and Documentation

- A.i. Specification: JSR-282 Real Time Specification for Java (RTSJ), beginning with Version 2.0, including all subsequent upgrades and Updates thereto.
- A.ii. Documentation: JSR-282 (RTSJ) TCK User's Guide and Release Notes (README).

#### B. Additional License provisions

- B.i. The TCK may be used only to test Licensed Licensee Products.

#### C. License Fees

##### C.i. Coverage of Fees

For Licensee's use of the TCK with Licensee Products, including support with updates & upgrades provided to Licensee by aicas.

##### C.ii. Schedule of Fees

*# Java Platforms/TCKs One-Time & Annual Support Fee*

##### C.iii. Amount of Fees

*Initial \_\_\_\_\_€, Renewal \_\_\_\_\_€*

## XIV Exhibit B: Support Services

*During the Term of this Agreement, aicas shall provide the following Support Services:*

- A. *Updates.* aicas will provide Updates for the TCK as such Updates are made generally available by aicas.
- B. *General Support.* aicas will provide telephone and e-mail support to answer installation, configuration and how-to questions regarding the TCK which Licensee may submit.  
aicas will use reasonable commercial efforts to acknowledge receipt of requests within two (2) business days, and to respond to such submissions in a timely manner.
- C. *Defect Correction.* In the event that Licensee provides notice of a Defect in the TCK, aicas shall use commercially reasonable efforts to repair such Defects. For each problem associated with the TCK, Licensee shall provide aicas with a description of such Defect and how Licensee addressed such problem, in form and substance reasonably satisfactory to aicas, to facilitate aicas's efforts in providing support for such Defect. "Defect" means any reported malfunction, error or other defect in the TCK that: (i) can be reproduced by aicas and Licensee; and (ii) constitutes a nonconformity with the Documentation for the TCK.
- D. *Hours.* Support Services will be available, either live or via email, during aicas's normal business hours, Monday through Friday excluding German public holidays.
- E. *Exclusions.* aicas shall have no obligation to provide Support Services if the Defect in the TCK is caused by (i) malfunction of hardware or software other than the TCK, (ii) by modification of the TCK not made or specifically approved by aicas, (iii) by operator error, or (v) by use of the TCK that is not in accordance with the operating instructions for the TCK. Furthermore, aicas shall have no obligation to provide Support Services for other than the most current version of the TCK generally made available to aicas's customers.