

# MICROEJ SDK EULA



**MICROEJ**<sup>®</sup>

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# MICROEJ SDK EULA

## PREAMBLE

THIS SOFTWARE LICENSE AGREEMENT (THE « AGREEMENT ») APPLIES TO PRODUCTS LICENSED BY INDUSTRIAL SMART SOFTWARE TECHNOLOGY S.A OPERATING UNDER THE BRAND NAME MICROEJ, 11 RUE DU CHEMIN ROUGE, F-44373 NANTES, FRANCE («IS2T®») INCLUDING ANY OF ITS SUBSIDIARIES (« IS2T PARTNERS ») OR DISTRIBUTORS (« IS2T DISTRIBUTORS ») TO YOU (« THE LICENSEE »).

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## 1 DEFINITIONS

The following terms have the meanings set forth below whenever they are used in this Agreement.

1.1 « **Executable Software** » means an executable code version of the software Source Code.

1.2 « **Software Source Code** » means a software, written in text form that must be translated into machine code before it can be run on any microprocessor architecture.

1.3 « **Software** » is a collective term for Executable Software and Software Source Code as defined above and all other forms of software programs, such as, but not limited to Java scripts.

1.4 « **The SOFTWARE** » means the Software program(s) included in the enclosed package or otherwise specified in this Agreement or Invoice (including any link-time and run-time modules), along with templates or other instructions and any Software updates, revisions and additional modules and templates (if any) the Licensee may receive from IS2T or an IS2T Partner or an IS2T Distributor hereunder from time to time.

1.5 « **MicroEJ Eclipse Workbench** » means the MICROEJ module that will be used as a Eclipse plug-in to load the SOFTWARE. MicroEJ Eclipse Workbench is a free, not an Open Source Software, whose use is subject to MicroEJ Eclipse Workbench EULA.

1.6 « **MICROEJ-EVAL** » means the evaluation EDITION of MICROEJ which can be provided for the purpose of testing MICROEJ on a computer and potentially on an embedded hardware system, as well as teaching and learning Java Applications design.

1.7 « **Documentation** » means a copy of the documentation, as provided by IS2T or the IS2T Partner or IS2T Distributor, together with the SOFTWARE for use by the Licensee.

1.8 « **Product** » means the SOFTWARE and Documentation licensed to the Licensee under the conditions of this Agreement.

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1.11 « **MICROEJ Specification Summary** » means the documentation, available for download from the resources page of IS2T website, that summaries all the specification of a MICROEJ.

1.12 « **Target Architecture** » means the family or group of embedded microcontroller and microprocessor devices belonging to one processor architecture defined by its instruction set and specified in the MICROEJ Specification Summary.

1.13 « **WIPO** » means World Intellectual Property Organization.

1.14 « **BINARY IMAGE** » means software code in its binary form that has been generated by the SOFTWARE.

1.15 « **Agency for the Protection of Programs (APP)** » means the French private Organization with office at 249 rue de Crimée, PARIS 75019 (FRANCE) where MICROEJ has been registered.

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1.17 « **Applications** » means the Licensee's software programs that are intended to be designed and/or used with the SOFTWARE.

1.18 « **The End-Product** » means the hardware device where the Executable Binary Image has been stored in order to be sold or used as a piece of equipment.

1.19 « **The Licensing Tool** » means a hardware or Software license manager that will settle the number of Users of the Licensee who will be authorized to simultaneously use the SOFTWARE.

1.20 « **User** » means the End-User who has to be a natural person and who will be allowed by the Licensee to use the SOFTWARE, under the responsibility of the Licensee.

1.21 « **The LICENSE FEES** » means the License Fees effectively paid by the Licensee or to be paid by the Licensee in consideration of the rights granted under this Agreement.

## 2 TERM OF AGREEMENT

2.1 This Agreement shall become effective, at the latest, at the Licensee's receipt of the SOFTWARE. It shall remain, subject to clause 2.2, in effect for a definite period in time, subject to the terms and conditions set out below – in particular, if there is a breach of this Agreement by the Licensee, IS2T, or the relevant

IS2T Partner or IS2T Distributor has the right, according to Section 17 , to terminate the Agreement. Registration of the Licensee as a rightful user of Products shall be made in accordance with applicable instructions from IS2T or the relevant IS2T Partner or IS2T Distributor.

2.2 This Agreement shall be terminated (i) at the end date stated in the Invoice or (ii) if the Licensee has not paid the Invoice or (iii) if the Licensee is in breach with this Agreement in accordance with Section 17 .

2.3 On termination, the Licensee shall have no claim on the SOFTWARE, including but not limited to any claim to any ownership of the SOFTWARE or the Intellectual Property Rights therein. The SOFTWARE, and all copies in the possession of the Licensee at the date of termination, shall be destroyed by the Licensee on termination of this Agreement.

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3.4 Subject to the terms and conditions of this Agreement, IS2T hereby grants to the Licensee a personal, non-transferable, non-exclusive license, to use the SOFTWARE simultaneously by the agreed number of authorized Users. The Licensee's agreed number of authorized Users of the SOFTWARE under the Agreement, if more than one, is stated in the Invoice. This number of authorized Users may be managed by the Licensing Tool.

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3.6 This Agreement allows the Licensee to use the SOFTWARE according to the EDITION stated in the relevant Invoice and the rights grants by the EDITION as described below. The number of Users shall also be stated in the relevant Invoice as well as the ending date of the rights grants under this Agreement.

3.7 The EDITION of MICROEJ provided under the terms of this Agreement will determine the rights the Licensee shall have under this Agreement and the purpose the Licensee can use the SOFTWARE for.

3.8 If the SOFTWARE's EDITION is MICROEJ-EVAL, the Licensee's rights are limited to the use of the SOFTWARE for the purpose of evaluating, learning and teaching.

3.9 If the SOFTWARE's EDITION is MICROEJ-DEV, the Licensee's rights under this Agreement are extended to the right of designing and modifying the SOFTWARE for the purpose of embedding it in a final product, under the term of the Manufacturing Contract, as stated in Section 9 .

3.10 Even if the SOFTWARE Source Code is accessible by the Licensee, the Licensee acknowledges that the SOFTWARE Source Code contains a copyrighted work and the proprietary information of IS2T. The Licensee also acknowledges that making that SOFTWARE Source Code accessible to third parties of this Agreement, will damage and infringe the Intellectual Property Rights of IS2T in the Products. In that case, the Licensee hereby agrees to indemnify IS2T (and any relevant IS2T Partner or IS2T Distributor) against all damage resulting from the breach. The Licensee shall keep and protect the confidentiality of the SOFTWARE Source Code with at least the same degree of care as the Licensee's own proprietary source code (if any), as further specified in Section 5.

3.11 Back-up Copies: the Licensee may make a SINGLE Back-up copy (ONE COPY) of the SOFTWARE in machine executable code form, only to be used in the event and to the extent that the copy of the SOFTWARE received from IS2T fails to function, is lost, damaged or destroyed. The Licensee agrees that he will make no other copies of the SOFTWARE and will not allow, authorize or assist others to copy any part or all of the SOFTWARE in any form without the prior written approval of IS2T. The Back-up copy of the SOFTWARE may be kept by the Licensee in a safety deposit box or such other secure place as is normally used by the Licensee for the storage of the Licensee's SOFTWARE Back-ups. The right for the Licensee under this Article shall not, in any circumstances, include the right to remove the Licensing Tool that may be included in the SOFTWARE or in the Media.

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- 4.6 Each and every breach by the Licensee hereunder will lead to a contractual penalty amounting to :
- 300% (three hundred pour cent) for breach under Articles 3.3, 3.4, 3.9, 3.10, 4.3, 4.4 and
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5.1 The Licensee agrees that all information relating to the SOFTWARE can be used solely under, and in accordance with, this Agreement. The Licensee has no right at any time, during or after cancellation or termination of this Agreement to disclose, directly or indirectly, such material and/or information relating to the SOFTWARE, to any third party without IS2T's prior written approval. The Licensee shall be liable for all losses, costs, damages and expenses arising out of or in connection with the Licensee's failure to comply with the requirements of Section 5.

5.2 THE LICENSEE'S CONFIDENTIALITY OBLIGATIONS HEREUNDER SHALL SURVIVE THE CANCELLATION OR TERMINATION, FOR ANY REASON, OF THIS AGREEMENT.

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```
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7.1 Some libraries may be provided in source code starting with the following template:

```
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/* Any modification of the source code will break IS2T warranties on the whole library
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7.3 For the avoidance of doubt, the libraries provided in source code are not free open source software and can only be used by the Licensee under the terms of this agreement. Any modification will make the library a software provided “as is” with no warranty of any kind.

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8.2 THE LICENSEE SHALL NOT USE ANY PART OF, OR TOOLS FROM, THE SOFTWARE MICROEJ ON CODES OR APPLICATIONS THAT ARE NOT INTENDED TO BE USED WITH THE SOFTWARE MICROEJ.

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9.1 If the EDITION of the SOFTWARE enables to do so, the Licensee may, for the purpose of a demonstration, generate, with the SOFTWARE, a simulator that can be run on a computer (the JPF Player). IS2T hereby grants the Licensee a non-exclusive, free of charge license to use and provide the JPF Player for the purpose of commercial and technical demonstration. The terms of use of the JPF Player are stated in the JPF Player End User License.

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9.3 BINARY IMAGES for other purposes, such as, but not limited to those manufactured within End-Products, beta units and any other "production quality" units, are not covered by this Agreement.



9.4 THIS AGREEMENT DOES NOT GIVE THE LICENSEE ANY RIGHT ON THE BINARY IMAGE AND ANY MATERIAL GENERATED BY THE SOFTWARE, OTHER THAN THE RIGHTS EXPRESSLY GRANTED ABOVE.

9.5 If this Agreement applies to MICROEJ-EVAL (according to the Invoice), the SOFTWARE is not provided to the Licensee in order to generate a BINARY IMAGE that will be embedded in an End-Product.

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9.11 THE LICENSEE IS RESPONSIBLE FOR ANY UNAUTHORIZED USED OF THE GENERATED MODIFIED PLATFORM.

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10.1 In consideration of the rights granted and service rendered by IS2T under this Agreement, the Licensee shall pay the LICENSE FEES for the SOFTWARE as specified of the Invoice. Payments shall be made in accordance with the payment schedule stated in the Invoice and the Sales Terms and Conditions.

10.2 If the Licensee fails to pay within the time stipulated in the payment schedule in the Invoice, IS2T (or the relevant IS2T Partner or IS2T Distributor as the case may be) shall be allowed to a) charge interest after the due date as stated in the Invoice, b) postpone the fulfillment of any of its own obligations until payment is made, and/or c) terminate the Agreement by notice in writing to the Licensee and d) recover from the Licensee any and all loss incurred.

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11.3 The warranty discussed in Article 10.1 will not apply if the SOFTWARE has been used improperly, or installed on equipment not specified in the relative MICROEJ Specification Summary. A minor breach of the above warranty by IS2T (such as unwarranted delay in repairing or replacing the Media) will not give the Licensee the right to terminate this Agreement.

11.4 THE ABOVE WARRANTY IS IS2T'S ONLY WARRANTY WITH REGARD TO THE SOFTWARE. NO OTHER WARRANTY OR CONDITION, EXPRESS OR IMPLIED, WILL APPLY. IS2T WILL NOT BE LIABLE FOR ANY LACK OF PERFORMANCE OF THE SOFTWARE. IS2T SPECIFICALLY EXCLUDES ALL OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ABILITY TO ACHIEVE A PARTICULAR RESULT, OR OF ANY OTHER WARRANTY OBLIGATION ON THE SOFTWARE.

11.5 The provisions of Section 11 shall survive any expiration or termination of this Agreement.

## 12 INSURANCE

12.1 IS2T has subscribed to an insurance policy covering its professional and civil liability under Section 13 .

## 13 INTELLECTUAL PROPERTY INFRINGEMENT

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13.3 IS2T shall not be liable if the alleged infringement arises out of (i) any unauthorized use of the SOFTWARE, (ii) any modifications made by the licensee or a third party, or (iii) any articulation of the SOFTWARE with other products or devices not provided by IS2T. THE OBLIGATIONS STATED IN THIS

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## 14 FORCE MAJEURE

14.1 Neither party shall be held responsible for a breach of this Agreement, if that breach is caused by an event considered to be a "*Force Majeure*". The "*Force Majeure*" legal Criteria are : (i) unpredictable, (ii) extern to the party and (iii) unavoidable. The event that can be considered as Force Majeure could be (but not limited to) riots, floods, war, warlike hostilities, acts of terrorism; fires; embargo, power, fuel, means of transportation or common lack of other necessities.

14.2 Each party shall notify the other in writing of the beginning and the end of such circumstances.

## 15 LIMITATION OF LIABILITY

15.1 NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT IS2T'S (OR IS2T PARTNERS' AND IS2T DISTRIBUTORS') LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM IS2T'S (OR IS2T PARTNERS' AND IS2T DISTRIBUTORS') NEGLIGENCE.

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15.5 IS2T solely warranties that IS2T will not not damage the Licensee's systems environment in any way or degrade the Licensee's systems environment more than can be reasonably expected (memory size for code and data stored to be specified and CPU load for instance) or introduce or permit the introduction of computer viruses, worms, Trojans, malware, spyware, any form of malicious code or other unauthorized software or make unauthorized changes to software whether accidental or otherwise.

The provisions of Section 15 shall survive the cancellation or termination of this Agreement.

## 16 SUPPORT MAINTENANCE AND UPDATE

16.1 This Agreement does not grant the Licensee any right to any improvements, modifications, enhancements, upgrades or updates to the SOFTWARE, or any other support service relating to the SOFTWARE. A separated agreement may be concluded with IS2T. Notwithstanding the above, the use of

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## 17 TERMINATION OF THE AGREEMENT

17.1 IS2T shall have the right to terminate this Agreement, effective immediately, if the Licensee is in breach of any of his obligations under this Agreement, including, but not limited to (i) the use of the SOFTWARE in any manner other than the rights granted in Sections 3 and 4, (ii) a breach of the confidentiality provisions outlined in Section 5, or (iii) a failure of the Licensee to remit payments as provided in Section 9.

17.2 This Agreement will terminate immediately, without notice, if the Licensee suspends his payments, becomes bankrupt or insolvent, or enters into liquidation.

17.3 Upon IS2T's termination of this Agreement (as set out in this Section 17 ), and in addition to the destruction of all copies of the SOFTWARE (as provided in Article 2.3), IS2T (or IS2T Partners and IS2T Distributors) may, at its option, require a written confirmation that all material related to the SOFTWARE has been destroyed.

17.4 The provisions of Article 16.3 shall survive the cancellation or termination of this Agreement.

## 18 PROHIBITION OF TRANSFER

18.1 This Agreement shall not be, in any situation, assignable or transferable in whole or in part by either party, without the prior written approval of the other party. This notwithstanding, IS2T may transfer, on whole or in part, this Agreement, to a company that is part of the IS2T Group of Companies, in the event of a merger or similar corporate reorganization.

## 19 PROHIBITION OF AMENDMENT

19.1 No alteration or amendment to this Agreement shall be valid unless such alteration or amendment is made in writing and signed by both Parties.

19.2 Any notice or communication under this Agreement shall be made in writing either by letter or by email and then confirmed letter to the parties at the addresses stated in the Invoice or at such other address a party may specify by written notice to the other.

19.3 This Agreement contains the entire understanding between the parties concerning its subject matter and supersedes any other agreement or understanding, whether written or oral, which may exist or have existed between the parties on the subject matter hereof.

## 20 ARBITRATION AGREEMENT

20.1 The Parties agree to submit to mediation, in accordance with the WIPO Mediation Rules, any dispute between IS2T (or an IS2T Partner or IS2T Distributor) and the Licensee, including but not limited to those arising under, out of or relating to this Agreement, the Invoice or the SOFTWARE and any subsequent amendments thereto.

20.2 The place of mediation shall be Paris, France. The language to be used in the mediation shall be English.

20.3 Disputes where the claimant is exclusively asserting claims for a monetary amount of less than fifty thousand euros (EUR 50,000).

The parties further agree that, if, and to the extent that, any such dispute where the claimant is exclusively asserting claims for a monetary amount of less than fifty thousand euros (EUR 50,000) has not been settled pursuant to the mediation within sixty (60) days of the commencement of the mediation, it shall be referred to the French Commercial Court of Nantes. Alternatively, if, before the expiration of the said period of sixty (60) days, either party fails to participate or to continue to participate in the mediation, the dispute shall be referred to French Commercial Court of Nantes.

20.4 All other disputes, including disputes where the claimant is asserting claims for a monetary amount equal to or above fifty thousand euros (EUR 50,000) and disputes where the claimant is asserting claims concerning issues that are not quantified in monetary amounts.

The parties further agree that if, and to the extent that, any such other dispute including dispute where the claimant is asserting claims for a monetary amount equal to or above fifty thousand euros (EUR 50,000) and dispute where the claimant is asserting claims concerning issues that are not quantified in monetary amounts has not been settled pursuant to the mediation within sixty (60) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of sixty (60) days, either party fails to participate or to continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be Paris, France. The language to be used in the arbitral proceedings shall be English. The dispute referred to arbitration shall be decided in accordance with the French law.

## 21 THIRD PARTY SOFTWARE

21.1 MICROEJ Software Package (that can be either a media or any virtual container) may include one or more pieces of Software that are not IS2T proprietary Software which may be bundled with the SOFTWARE. Some of those pieces of Software are provided separately (in different folders) under a Copyleft License that is included in the Media. Any use of those third party pieces of Software is subject to the terms and conditions of the associated license enclosed that such third party Software.

21.2 Other Software, property of companies other than IS2T, may be provided by IS2T in conjunction with the SOFTWARE have been properly licensed to IS2T to be integrated in or with the SOFTWARE and shall be used only in conjunction with the SOFTWARE and in accordance with this Agreement.

## 22 APPLICABLE LAW

22.1 This Agreement shall be governed by, and interpreted in accordance with French Law excluding its conflicts and choices of law provisions.

22.2 The provisions of Sections 20 21 22 and those other provisions which expressly indicate such shall survive the cancellation or termination of this Agreement.