



DELIVERABLE

D.5.5 – Licensing Model and SLA

Project Acronym: UNCAP

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Authors: Angela Ivanova (INI-Novation GmbH);
Wolfgang Kniejski (INI-Novation GmbH);

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Dissemination Level		
P	Public	X
C	Confidential, only for members of the consortium and the Commission Services	

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1. Revision history and statement of originality

1.1. Revision history

Rev	Date	Author	Organization	Description
V0.1	04/05/2015	Wolfgang Kniejski	INI	Initial Outline
V0.2	20/10/2015	Wolfgang Kniejski	INI	Outline Update
V0.3	28.03.2017	Angela Ivanova	INI	Draft Initial Input
V0.4	17.06.2017	Angela Ivanova	INI	Updated Version
V0.5	29.08.2017	Wolfgang Kniejski	INI	Business Case Adaptation
V0.6	20.12.2017	Wolfgang Kniejski	INI	Adding Draft Agreements
V1.0	20.12.2017	Wolfgang Kniejski	INI	Finalisation
V1.0	28.12.2017	Irene Facchin	TRILOGIS	Quality check

1.2. Statement of originality

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2. Table of Acronyms

Acronym	Description
App	<i>Application</i>
Attn.	<i>Attention</i>
D	<i>Deliverable</i>
eCare	<i>Electronic care</i>
e.g.	<i>Example given</i>
HER	<i>Electronic Health Record</i>
Etc.	<i>Et cetera</i>
EULA	<i>End User License Agreement</i>
HL7	<i>Health Level Seven International</i>
ICT	<i>Information and Communication Technologies</i>
IP	<i>Intellectual Property</i>
IPR	<i>Intellectual Property Rights</i>
ISO/TR	<i>International Organization for Standardization/Technical Report</i>
IT	<i>Information Technologies</i>
OGC	<i>Open Geospatial Consortium</i>
PHR	<i>Electronic Health Record (used synonymously with Personal Health Record)</i>
QoS	<i>Quality of Service</i>
QR-code	<i>Quick Response code</i>
S	<i>Service</i>
SDK	<i>Software Development Kit</i>
SLA	<i>Service Level Agreement</i>
T	<i>Task</i>



3. Executive Abstract

Increasingly fast aging population is set to challenge health and care systems. Current care models are proving to be inappropriate and unsustainable. This situation is clearly calling for new care & assistance paradigms.

The UNCAP project (“Ubiquitous iNteroperable Care for Ageing People”) addressed such a fast-evolving scenario through the development of an open, scalable and privacy-savvy ICT infrastructure designed to help aging people (including those with mild cognitive impairments) live independently and with dignity. In particular, it leverages on an ecosystem of biosensors and indoor & outdoor localisation solutions to deliver an infrastructure capable to continuously monitor and assist users in a non-invasive way. Furthermore, UNCAP allows accurate monitoring of user’s health and well-being state (physical & cognitive), and also creating a range of brand new services designed to stimulate healthier lifestyle and more active aging process.

As main goals UNCAP targets to gain effectiveness of the health care process by a more effective elaboration process through enhanced home care treatment and prevention and in order to postpone the recovery and delay cognitive impairment. To this extent, the ultimate goal of is to extend the duration of high-quality life of aging, frail, and cognitive impaired citizens by making life for ageing people and people in need of care more comfortable and at the same time to reduce effort for the nursing and care-taking staff.

In practice, UNCAP is a complete system including software, hardware and cloud services. Every device, tablet or smartphone is used in the system in a way, that the complete data can be accessed easily but secured at the same time. For nearly any data there are devices to monitor or measure, e.g. for blood glucose measurements, blood pressure measurements, heart rate measurements, blood oxygen saturation measurements, respiratory measurements, hydration measurements, measuring physical activity as well as a connected scale for weight monitoring and a device worn on the head for alertness monitoring. UNCAP is essential for significant commercial use based on different use cases, related business schemes and scenarios.

With regards to IPR implications of the developed software, it is worth noting that UNCAP BOX, the UNCAP CLOUD and the UNCAP APP are released as open source technology and will be made publicly available through various repositories. However, elements of the so called UNCAP core system as well as enabling technologies provided by different technology partners are so called background IP, thus constituting pre-emptive rights, which use and application has to be licensed.

Within an initial business concept, the company NIVELY was identified and selected to operate UNCAP as a separate business line, commercialising UNCAP project results and licensing the needed technologies from the selected UNCAP consortium members. For this purpose a standard licensing template is needed, thus provided and described within this document.

In addition, this document provides a specific template of a Service Level Agreement (SLA) for UNCAP services, which covers all key parameters needed for guaranteeing Quality of Service (QoS). It is based on common practices in the markets and is meant to be a contractual document that will be usable by NIVELY and other possible future UNCAP technology providers in contractual relationships.



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5. Background Information

5.1. The UNCAP Product and Services

The UNCAP product is a complex set of integrated functionalities but available to buy services in one go; as such the product offers easy deployment. UNCAP should be understood as a grouping of individual functions that together comprise a suite of innovative ready-to-be-marketed eCare services, based on consumer-grade technologies, designed to help elderly people with cognitive impairments live a more independent life. UNCAP maximises use of standards to create an interoperable open infrastructure that leverages on location and sensor-based technologies to create radically new paradigms for service care delivery. The objectives of UNCAP are:

- Improve effectiveness of the health care processes through more effective evaluation processes during the hospital-hospice recovery;
- Enhance home care treatment and prevention, in order to delay cognitive impairment of elderly and possibly postpone the necessity of recovery at hospitals or hospices; and
- Support more independent living and improve quality of life and dignity of cognitively impaired aging users by helping them be more independent and for longer time.

From a technical point of view, UNCAP is build five pillars:

- **Interoperability and use of open standard**, through support for a range of open standards for all its key services (e.g. position, sensors, building automation systems, clinical assessment, storage of clinical data etc.) allowing for future extensions in terms of hardware and software;
- **Openness**, through release of open specifications and open software components;
- **Scalability**, through use of cloud-centric approaches;
- **User friendliness**, ensuring compliance with all most common usability standards (e.g. ISO/TR 16982:2002); and
- **Privacy, security and trust** through attention to all related privacy and security aspects.

Each component element is originated by a distinct owning entity (themselves mix of commercial and public-sector organisation). Elements include software services, governance methodology, data analytics tools, security tech/enablers, etc. Each item has some intrinsic value and some but not all of the component elements are being sold as individual products.

The UNCAP Electronic Health Record (PHR) is the core system of the UNCAP architecture. It will be certified, and communication processes within the system will be standardized. The key elements of the core system are illustrated in the chart below and briefly described hereinafter:

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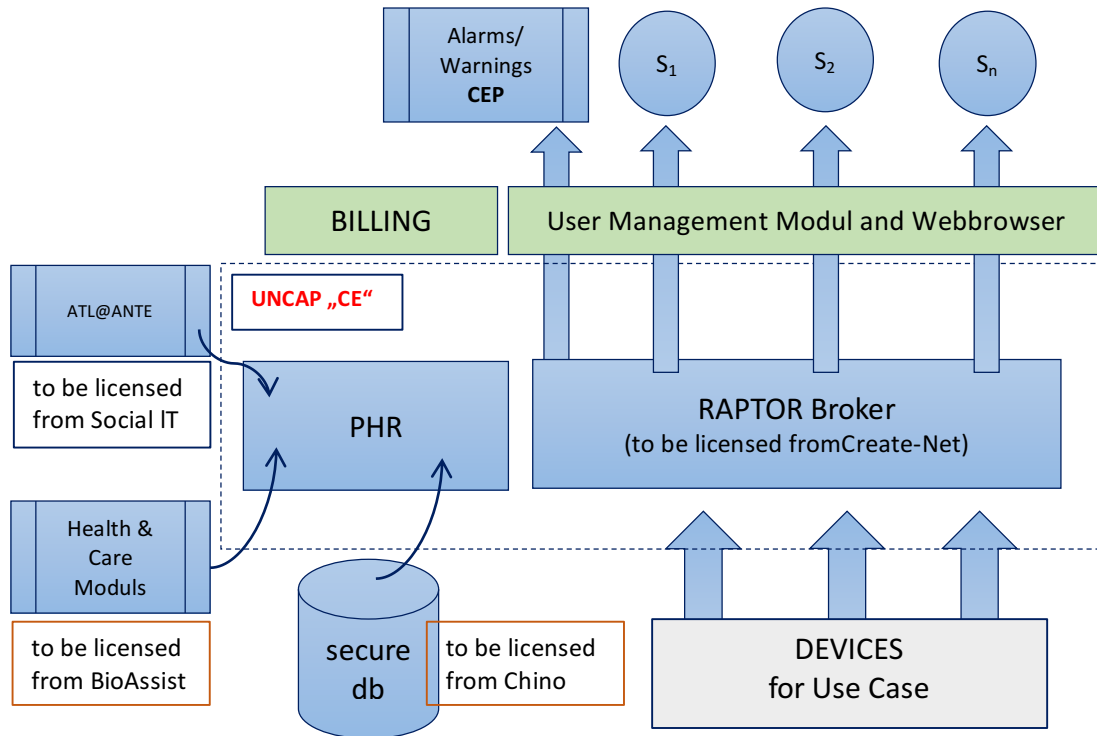


Figure 1: Elements of the UNCAP core system.

Any target customer can buy EHR and the basic UNCAP functionality from NIVELY for a defined market price. However, NIVELY has to pay a license fee as royalties to selected basic contributors:

- to Social-IT for the contributed management of data through the licensed technology (= measurement methodology) ATL@NTE;
- to CreateNet providing the RAPTOR Broker for enriching the EHR with data being generated by other applications;
- to Chino for providing the secure and trusted data base compliant to European regulations;
- to Goce Delčev University, University of Ljubljana and to SocialIT for providing the User Management and Management System (e.g. web interface and user authentication and access control);
- to BioAssist for providing the visualisation interface as a sort of “Dashboard”; and
- to ATOS for providing Complex Event Processing to detect alarms and warnings of different health devices (e.g. glucometers heart rate meters, etc.)
- to those organisations providing use case services through the standardised UNCAP interfaces.

UNCAP used during the project duration the open source version of Raptor, making this a “freemium” model. The commercial version of UNCAP will use the professional Raptor version. Libraries, web interfaces, etc. may be done as open source; however, in the commercial version there has to be a compensation of effort for maintenance, upgrades, bug fixing and release management.



The classical service schemes to be applied shall offer permanent service levels, yearly services and yearly services on-line. For on-site services NIVELY will sell a hosted service.

The UNCAP core system allows also to be sold as Software Development Kit (SDK) for new technology providers. In this scenario, new providers have to develop the interface, have to get certified and then can plug into UNCAP. The UNCAP Box will enable all data to be communicated; alternatively, vendors can communicate via mobile devices. The second option is to communicate the data via RAPTOR through the UNCAP Cloud. Therefore, for new technology providers UNCAP is an engine for value-added services. The SDK will be provided to new vendors to come in and the new vendors will pay for the validation services, provided by Fida Solutions Srl. All the equipment has to be delivered with easy to use instructions and have to be easily installed and connected to the BOX. The only thing a customer/user has to do is to simply scan with his mobile phone a QR-code on each of the sensor and follow few simple instructions on the screen. The UNCAP BOX automatically downloads the required plugins from the UNCAP cloud service, which allows –from that moment on- interoperable (hence regardless of the manufacturer) access to sensor data. This way sensors can connect -through the UNCAP BOX acting as home gateway- to the UNCAP cloud platform, where a customer’s/user’s medical records are stored in a PHR and transmitted via HL7/FHIR JSON messages.

5.2. The Business Opportunity

Healthcare and eCare systems provide a massive potential market. Originally is was planned to establish an UNCAP spin-off company, which strategy should allow heavily building upon UNCAP success stories and leveraging the business models implemented in the project pilots as use cases into international markets. Therefore, in the UNCAP project meeting in Thessaloniki in June 2017, a detailed financial planning and an extensive business plan scenario was introduced to the UNCAP consortium members.

Every consortium member was asked to decide on two UNCAP commercialisation scenarios: starting an UNCAP spin-off with equity participation of UNCAP consortium members or identifying a company that would operate UNCAP as a separate business line, commercialising UNCAP project results and licensing the needed technologies from the selected UNCAP consortium members.

As a result of the consortium voting, which closed on August 15th, 2017, only two UNCAP partners expressed their interest to provide equity for the establishment of an UNCAP spin-off company. The overwhelming majority of the consortium members voted for a licensing model.

Consequently, NIVELY was identified as a company that was willing to establish a separate business line for the commercialisation of UNCAP results. The company, NIVELY, was already conducting business in the eCare markets in France and Italy at that time: their core solution MentorAge® can detect the danger, turn on the lights and immediately send an alert to caregivers, granting the person to be taken care of the freedom she/he would enjoy at home. NIVELY’s mission is to make nursing and residential homes safer environments, thus being compliant with the UNCAP mission and goals. NIVELY uses smart and high-accuracy location technology capable to understand dangerous situations and react, if needed; thus, creating opportunities for synergies with UNCAP services and for harvesting on scaling potentials opened up.



The management of NIVELY accepted to open up a separate business line to commercialise selected UNCAP use cases, applying the so called UNCAP core system described above. The system can be easily extended in the future to “understand” more conditions of risk. Exactly for this reason, NIVELY expressed interest to license UNCAP technologies. NIVELY is aimed at being a key future player in terms of creating added value in the eHealth and eCare field and making it available to businesses and private customers. The global IPR policy defined for NIVELY is aimed at being in line with this strategic vision and will make use of licensing in IPR and preparing technologies for distribution and exploitation channels.

In summary, IPR is important for NIVELY in terms of financing sustainability. IPR and knowledge will be created, ready to be transferred to the international markets. Technology transfer means that activities such as licensing in relevant technology and selling technology-based services provide a return on research investment and therefore an additional income stream. These revenues will be specifically intended to set up strategic collaboration activities between NIVELY and the UNCAP community. This, in turn, will lead to co-operation agreements with external stakeholders. Once this business community is established, as part of the innovative ecosystem, the potential is created for royalty payments and payments from subcontracts to establish another important long-term income stream for NIVELY.

Therefore, for proper IP management rules and engagement scenarios have to be defined, which are drafted in the following chapters.



6. Engagement Scenarios

A wide variety of tools, methods and architectures are capable of enriching and analysing medical data. Healthcare jurisdictions, however, have grown differently in each European nation (and often differ within nations) so regional and national jurisdictions have different technology readiness levels in terms of accepting UNCAP capabilities. Furthermore, variations in regional/national practice or the need to assess specific policy impact can mean that local studies using local information are highly desirable and commercial extrapolation from general information may not always be appropriate. UNCAP functionality is therefore a core requirement and we identify the UNCAP BOX, the UNCAP CLOUD and the UNCAP APP together as a novel product and service opportunity 'UNCAP'.

This will create for NIVELY the following **competitive advantages**:

- With access to UNCAP use cases and features of the UNCAP system, NIVELY will be enabled to enlarge and enrich its own core business, the sales of MentorAge®.
- By establishing a second business line with the goal to sell UNCAP services, the initial core markets of NIVELY can be addressed and business model economies of scale as well as sales synergies can be achieved.
- Licensing elements and functionalities of UNCAP from core UNCAP partners creates automatically an ecosystem of technology providers and vendors for NIVELY in different technology segments as well as in different geographical regions, thus allowing fast scaling up in mid term future.
- Research partnerships and consultancy agreements: NIVELY will perform technology and knowledge transfer through contract research, collaborative research, consultancy and service provision. In terms of IPR, specific attention will be paid to the question of ownership and exploitation rights after the term or termination of the contract. Appropriate allocation of results will be sought in order to guarantee access to relevant results to NIVELY for further research, development, sales and consultancy purposes while protecting the interest of its industrial partners in terms of commercial exploitation in specific fields.
- Licensing: licensing is a preferred exploitation channel for NIVELY, as it allows the owner of an intangible asset protected by IPR to transfer the right to use or distribute that asset to another organization while retaining the ownership of that specific asset. It is especially relevant for generating revenues, accessing ground markets and contributing to standards, while retaining control on a specific technology and involving other organisations in support and commercialization.

UNCAP's **USP** can be viewed can be viewed as a complex set of integrated functionalities available to be bought into one system. Each of the components is originated by a distinct owning entity (giving a mix of commercial and public sector). Each item has some intrinsic value and some but not all are being sold as individual products now. There is quasi "zero competition for UNCAP" as it is not possible to buy all individual components. This means the barrier to uptake is so high, effectively requiring creation from scratch, it prevents adoption by groups that currently do not have access to the UNCAP functionality. Therefore, the sum of the parts has a value



distinct from the value of each individual component, but is dependent on presence of all.

It is anticipated that some purchasers of UNCAP may want to purchase additional professional input. These could be offered through a consulting service, positioned as a source of international experience.

We anticipate **customers** across a range of areas including industry, public healthcare, government, professional carers and individuals. In order to create a sustainable business NIVELY will need to create clear opportunities for monetisation in the process of buying in technology via licensing and commercialising UNCAP functionalities via service agreements.

Each component will be contributed by originating legal entities (**the contributors**) either public or commercial. Contributors will conclude for the design, development, usage and distribution of the respective component licensing agreements with NIVELY based on NIVELY's standard-agreements. The number of eligible contributors may vary from time to time due to new developed components or termination of a contributor. In this event the licensing agreements will be adjusted accordingly.

UNCAP will be available for purchase via a single service and installation fee, calculated as an average price per room installation ("**unit price**"). Underlying the unit price will be a revenue sharing model for earned income distribution among originating legal entities (the contributors). All revenues generated from the sale of the UNCAP belong to NIVELY and will be shared among the eligible contributors according to the agreed licensing terms and conditions.



7. The License Agreement

This section provides a template for a Technology License Agreement between NIVELY and its technology providers (contributors), aimed at governing the relationships between the two parties in all relevant as well as rights and obligations of the parties.

This Software License Agreement (the “Agreement”) shall be made between:

1. [name] with offices at [address] (Licensor)
2. [name] with offices at [address] (Licensee)

The following Attachments shall be incorporated by reference into the Agreement

Attachment 1 - Licensed Products

Attachment 2 - IP Identification Form

Attachment 3 - Territory

Attachment 4 - Project Charter

In consideration of the mutual covenants and agreements hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

DEFINITIONS:

“Delivery Date” means the date of delivery to Licensee's designated carrier, or the date the features are enabled, or the date the software is downloaded to the Designated Server or Designated Processor.

“Designated Processor” means a single stand-alone computing device

“Licensed Products” means any product designed and developed by Licensee as listed in Attachment 1

“Licensed Software” means Licensor's software products identified in Attachment 2, including all manuals and other related technical documentation provided by Licensor, and including all updates thereto delivered to Licensee by Licensor.

“Object Form” means the Licensed Software in machine-readable, compiled object code form.

“Designated Server” means a Designated Processor that hosts the Licensed Software to be accessed and used by multiple End-Users.

“Source Form” means the mnemonic representation of binary machine code, high-level statement versions of the Licensed Software, written in the source language used by programmers.

“Territory” means the geographic area specified in Attachment 3.

“Third Party Products” means any product or component manufactured by a party other than Licensor.

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Reporting. The Licensee will send the Licensor a report within [60] days after the end of each calendar quarter, showing the Net Sales Value of each Licensed Product sold [and the Net Receipts], and a calculation of the royalties [and revenue share] due for that quarter.

Mandatory Accounting. The Licensee will keep complete and accurate accounts of all Licensed Products sold and will permit the Licensor or its agents to audit those accounts solely for the purpose of determining the accuracy of the royalty reports and payments. If any audit reveals a discrepancy of more than [10] % to the detriment of the Licensor, the Licensee will reimburse the Licensor for the costs of that audit

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Payment terms. All amounts payable to the Licensor under this Agreement are exclusive of VAT, export or import duties or any similar tax or duties, which the Licensee will pay at the rate from time to time prescribed by law

Late payment charges. If the Licensee fails to make any payment due to the Licensor under this Agreement, without prejudice to any other right or remedy available to the Licensor, the Licensor may charge interest both before and after any judgement) on the amount outstanding, on a daily basis [at the rate of [four] per cent per annum above the [reference rate] from time to time in force].



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Except for personal injury claims, willful misconduct and Licensee’s violation of Licensor’s intellectual property rights, including through a breach of the software license, neither Licensor nor Licensee shall be liable for (i) any indirect or consequential damages, or for any loss of profits, revenue, or data, toll fraud, or cost of cover and (ii) direct damages arising under this Agreement in excess of the royalties paid for the Licensed Software.

TERMINATION

Termination. This Agreement is effective until terminated. Upon prior written notice, either Party may terminate this Agreement if the other Party becomes insolvent, ceases doing business, files a petition in bankruptcy or is subject to the filing of an involuntary petition for bankruptcy which is not rescinded within a period of forty-five (45) days, or fails to cure a material breach of any term or condition of this Agreement within thirty (30) days of receipt of written notice specifying such breach.

Effect of Termination. Upon termination of this Agreement for any reason, Licensee shall immediately discontinue the use and distribution of the Licensed Software unless otherwise agreed in this Agreement. All payments made by Licensee to Licensor hereunder are non-refundable.

Sublicenses. On the termination of this Agreement, the Sub-licensees may continue to use the Licensed Products for the remaining period of the existing contract with the Licensee.

GOVERNING LAW, DISPUTE RESOLUTION

Governing Law. The Agreement and any disputes arising out or relating to the Agreement (“Disputes”) are governed by the laws of [country], excluding conflict of law principles, the United Nation Convention on Contracts for the International Sale of Goods.

Jurisdiction. For any disputes arising out of this Agreement the Parties consent to the personal and exclusive jurisdiction of the courts of [venue, country].

Injunctive Relief. Nothing in this Section will be construed to preclude either party from seeking provisional remedies, including but not limited to temporary restraining orders and preliminary injunctions from any court of competent jurisdiction in order to protect its rights pending arbitration.

Time Limit. Actions on Disputes between the parties must be brought in accordance with this Section within two years after the cause of action arises.

MISCELLANEOUS PROVISIONS

Assignment. This Agreement (including, without limitation, the license granted hereunder) is personal to Licensee and shall not be assigned or transferred by Licensee, including, without limitation, by operation of law, except that, and only with

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prompt written notice to Licensor, the Agreement may be transferred to a purchaser of all or substantially all of the assets of Licensee. Licensor shall have the right to assign and/or license its rights and obligations under this Agreement and all its right, title and interest in the Intellectual Property without the consent of Licensee.

Force Majeure. Except for Licensee's obligation to make timely payments, neither party is liable for any delay or failure in performance to the extent the delay or failure is caused by a Force Majeure event. Each party shall endeavour to give the other party reasonable notice of any such delay or failure.

Entire Agreement. The terms in this Agreement represent the complete and final agreement between the parties and supersede and replace all other prior or contemporaneous oral or written understandings, statements, and agreements between the parties on the subject matter hereof

Severability. Should separate provisions of this agreement be or become ineffective, the validity and enforceability of the other provisions of this agreement shall not be affected thereby. Should one or more provisions of this agreement be ineffective, they are to be replaced by a legally effective provision that approximates the economic purpose of the selected, ineffective provisions

Non-waiver. The failure of either party to assert any of its rights under the Agreement, including, but not limited to, the right to terminate the Agreement in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of the Agreement in accordance with its terms.

No agency. The relationship of the parties under this Agreement shall be at all times one of independent contractors, and not that of franchisor and franchisee, joint venturers, and no fiduciary relationship exists between the parties. Neither party shall have any authority to assume or create obligations on the other's behalf, and neither party shall take any action that has the effect of creating the appearance of its having such authority.

Notices. All notices required or allowed to be given under the Agreement will be in writing in English (notwithstanding the language of the Agreement), sent by certified or registered mail with return receipt requested or by international courier or facsimile (with receipt confirmed), and will be deemed to be given when actually received. Notices with respect to operation and technical information or changes in the price list may be given electronically in English. Notices will be addressed to the parties as designated hereafter, or to such other address designated by either party in writing to the other party:

To Licensor:

Attn.: Contact Representative

Function:_____

To Licensee:

Attn.: Contact Representative

Function:_____



8. The Service Level Agreement - SLA

8.1. General Service Terms

This section provides a template for a Service Level Agreement between NIVELY as service provider and recipients/customers, aimed at governing the relationships between the two parties in terms of availability and performance of the service being supplied, as well as rights and obligations of the parties.

The service level agreement is not meant to be static and should reflect not only any foregoing changes in the services being delivered, but also the individual service delivery processes and service level expectations discussed and agreed upon between technical service providers and the current and future recipients of the services being offered.

DEFINITIONS

“Fix(es)” means a correction that creates or restores full compliance with the applicable requirements.

“Updates” means minor releases of the IT System consisting primarily of standard bug Fixes and patch releases that are generally provided by the service provider. Unless the service provider, at its sole discretion, decides to integrate them in the version of the IT System covered by this SLA, Updates do not include: (i) new or additional functionalities to IT System, (ii) any major software releases, functional enhancements and/or performance improvements, and (iii) new or separate product offerings.

“Workaround” means a temporary solution which does not create or restore full compliance with the applicable requirements, and which can be used for a short period of time only. The implementation of a workaround reduces the severity of a case according to the severities definition hereunder.

APPENDIX

IT System summary	Description
Products provided	Description
Services provided	Description, e.g. development of custom software for the IT System and deployment of the IT System
IT System Prerequisites	Description – To be filled in
Supported equipment and operating systems	Description – To be filled in

PURPOSE OF THE SLA

Subject to the terms of an end user license agreement (“EULA”), Service Provider provides Client with access to [to be specified] UNCAP products and associated services (the “IT System”). This service level agreement (“SLA”) sets the terms under which the IT System will be maintained and supported by Service Provider. A more thorough description of the IT System is provided in Appendix to this SLA. Any



Updates made to the IT System by Service Provider, at its sole discretion and from time to time during the Term of this SLA, will be included in the services provided hereunder by Service Provider, at no extra cost for Client.

AVAILABILITY OF THE SYSTEM

Service Provider will use all reasonable efforts to make the IT System available twenty-four (24) hours per day, seven (7) days a week EXCEPT in case of:

- Scheduled downtime for systems maintenance, including without limitation diagnostics, upgrades, operations reconfiguration or maintenance work by Service Provider’s hosting partner. Client will be informed at least [forty (40)] Working Hours in advance and upon written of any scheduled downtime for systems maintenance by either Service Provider or its hosting partner. Service Provider will do its best efforts to limit unavailability of the IT System and inconvenience to Client.
- Unscheduled downtime caused by external forces beyond the control of Service Provider, including but not limited to hardware failures, or downtime caused by Client's own network or infrastructure.

Except as set out here above, Service Provider aims at an availability of [99]% for the IT System.

RESPONSIBILITIES OF THE SERVICE PROVIDER

Service Provider warrants and commits to Client that:

- the IT System will generally operate in accordance with the specifications and description provided in Appendix to this SLA,
- Service Provider will not alter the design, scope, platform, base code or development roadmap of the IT System so that it materially diminishes the overall features and functionality of the IT System as described in Appendix to this SLA, and Service Provider will provide standard maintenance and updates to the IT System so that it does not materially deviate from those overall features and functionality during standard life cycles.

In case of problems related to alleged computer errors or defects in the IT System (“Error(s)”), Service Provider will classify the Errors reported based on the severity of the deviation experienced versus the standard features and functionality of the IT System as described in Appendix to this SLA.

Errors will be classified as follows:

Fatal. The Error reported renders the IT System inoperative. When attempting to use the IT System, user is prevented from performing a necessary function and there is no acceptable Workaround.

Severe. A major functionality of the IT System is experiencing a problem that substantially degrades performance of the IT System and causes major inconvenience to the user, causing a major feature to be unavailable or substantially impaired. A Workaround may exist but it has high user impact.

Medium. An important function of the IT System is experiencing an intermittent problem or a common non-essential operation is failing consistently, degrading the performance of the IT System or restricting Client’s use of the IT System by prohibiting Client from using one or more of the functionalities of the IT System, which cannot be considered however as main functionalities.



Minor. Any lower severability case, such as a common non-essential operation is failing consistently, causing only a minor impact on the use of the IT System.

In case of reported Errors, Service Provider will provide the following services:

Fatal Error. Service Provider shall allocate resources to work continuously during Working Hours to solve the problem as soon as possible and provide a Fix for the Error. If the Error can be circumvented by a Workaround that will be communicated to Client and the Error will be reclassified accordingly.

Severe or Medium Error. Service Provider shall exercise commercially reasonable efforts to provide a Fix for the Error.

Minor Error. Service Provider may include the Update or Fix for the Error in the next Update of the IT System.

Service Provider may supply solutions for reported Errors either in the form of a Workaround, a Fix or an Update of the IT System, whichever is necessary.

RESPONSIBILITIES OF CLIENT

Client is solely responsible for the reporting of Errors to Service Provider in accordance with the support procedures set forth in section “**Error! Reference source not found.**” below.

Client shall reasonably cooperate with Service Provider and provide relevant information to enable Service Provider to identify, reproduce, troubleshoot and resolve the Error experienced or at least picture the problem better. Furthermore, Client shall be responsible for allowing Service Provider to access the IT System as needed for the purposes of maintenance, Updates or fault prevention and for following all appropriate resolution procedures and requirements, as specified by Service Provider.

SUPPORT PROZEDURES

Support includes Web ([support ticket system], e-mail and chat) and phone support from Service Provider, available [Monday–Friday, 8:30 AM to 4:30 PM CET] time, except Service Provider’s legal holidays (“Working Hours”).

LIMITATIONS AND EXCLUSIONS

Except as set forth in this SLA, Service Provider makes no warranty regarding the availability or performance of the IT System.

Required technical capabilities for developing, implementing and operating the IT System (“IT System Prerequisites”) as well as supported equipment and operating systems have been clearly identified between Service Provider and Client and are listed in Appendix to this SLA. This SLA does not apply to any Error caused by hardware, software, equipment or other services (i) not listed in Appendix to this SLA or (ii) not purchased via or managed by Service Provider.

Additionally, Service Provider will have no obligation to support Client for Errors caused by Client’s negligence, abuse or misapplication of the IT System or Errors resulting from any other cause beyond the control of Service Provider, including without limitation acts of God or nature, labour disputes, riots, terrorist acts and sovereign acts of any federal or state government.

NON-EXCLUSIVE SUBCONTRACTING

Service provider is fully responsible for the services and performance of its subcontractors and any other providers that it may use to deliver services to Client

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under this SLA. All subcontractors or other providers employed by Service Provider, if any, shall be made aware of and subject to all provisions of this SLA.

Nothing in this SLA is intended to restrict Client from entering into service agreements with third parties. However, Service Provider provides no warranties for Errors resulting from such third-party services, if any.

Client acknowledges that Service Provider provides professional services for other parties and agrees that nothing herein will be deemed or construed to prevent Service Provider from carrying on such services.

INTELLECTUAL PROPERTY

Service Provider will have the right to use techniques, methodologies, tools, ideas and other know-how gained during the performance of the services set forth in this SLA in the furtherance of its own business and to perfect all other intellectual property rights related thereto, including patent, copyrights (except as otherwise stated below) trademark and trade secrets.

TERM AND TERMINATION

This SLA becomes effective upon signature by Client and Service Provider ("Effective Date"). The IT System is made available to Client under the terms of an end user license agreement ("EULA"), duly accepted and signed by Client and Service Provider. This SLA is not an amendment to such EULA but is a separate binding agreement that incorporates the terms and conditions of any such EULA related to Term. This SLA shall remain in force for the duration of the EULA or whatsoever, for a maximum duration of three (3) years. Termination of the client relationship between Client and Service Provider under the terms of the EULA automatically induces the termination of this SLA.

SURVIVAL

The respective rights and obligations under section "**Error! Reference source not found.**" of this SLA will survive its Term or Termination, as well as any pending obligations related to Errors reported pursuant to this SLA between its Effective Date and its Term or Termination for any reason.

GENERAL PROVISIONS

Choice of law. This EULA will be governed by and construed in accordance with the laws of [France]. Any dispute or litigation under this SLA will be submitted to the Courts of [France].

Amendment and complete understanding. This SLA, including Appendix, constitutes the final and complete agreement between Client and Service Provider regarding the subject matter hereof. The terms and conditions of this SLA may not be changed except by an amendment in writing, which references this SLA and is signed by an authorised officer of each party. Terms of this SLA supersede the terms of all other agreements, whether written or oral, between the parties hereto relating to the subject matter hereof.

Invalid or unenforceable provision. If any provision of this SLA is invalid or unenforceable, this shall not affect the validity of the remaining provisions of the SLA. Those shall remain valid and enforceable under the terms and conditions stipulated herein.



No implied waiver. A party's failure to exercise or delay in exercising any right, power or privilege under this SLA shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

8.2. Additional Service Terms

The previous section includes general statements regarding the service availability (i.e., uptime) and statements that services will be performed, or provided, in accordance with professional standards. This section provides additional terms and conditions, to be adapted on a case by case basis, and defining more precisely the performance targets for the client systems in NIVELY, support level commitments and what penalties may be applied to the technology providers in NIVELY should they fail to meet those service levels.

DEFINITIONS

“Resolution” means providing a Fix or Workaround for Errors reported.

“Downtime” means no response from the IT System during more than [one (1)] Working Hour.

PERFORMANCE METRICS

As a complement or substitute to the general guidelines set forth in section “**RESPONSIBILITIES OF THE SERVICE PROVIDER**” of this SLA, Service Provider will classify Errors reported by Client according to deviation versus the following performance metrics:

Criteria	Standard level	Error levels			
		Fatal	Severe	Medium	Minor
Capacity	≤ [10] location events per second per defined area	No location event at all	≤ [10] location events per [1] hour	≤ [10] location events per [5] minutes	≤ [10] location events per [30] seconds
Criteria	Standard level	Error levels			
		Fatal	Severe	Medium	Minor
Latency	≤ [5] seconds	> [2] hours	> [1] hour ≤ [2] hours	> [5] minutes ≤ [1] hour	≥ [30] seconds ≤ [5] minute
Maximum location update rate	[1 position update per device per second]	No position update per device during more than [5] hours	position update per device ≥ [1 hour] ≤ [5] hours	position update per device ≥ [5] minutes ≤ [1 hour]	position update per device ≥ [30] seconds ≤ [5]



					minutes
Accuracy	≤ 2.5 meters	None	> 10 meters	> 5 meters ≤ 10 meters	> 2.5 meters ≤ 5 meters

SUPPORT LEVEL OBJECTIVES

Service Provider warrants the following levels of support for the IT System:

Severity	Support level targets	
	Response time (taking into account Working Hours only)	Resolution time (taking into account Working Hours only)
Fatal	Notice of receipt of notice of the Error and classification as fatal must be sent by Service Provider within [2] hours	≤ [16] hours
Severe	Response to Client and classification of the Error as severe be sent by Service Provider within [12] hours	≤ [24] hours
Medium	Receipt of notice of the Error and classification as medium must be sent by Service Provider within [24] hours	≤ [48] hours
Minor	Response to Client and classification of the Error as minor must be sent by Service Provider within [48] hours	≤ [96] hours

For the purposes of this SLA, response and resolution times are deemed to begin at the time Client notifies Service Provider of an Error in accordance with the procedures set forth in section "**Error! Reference source not found.**" of this SLA.

Service Provided is deemed to have responded when it has replied to Client's initial request, to either provide a solution or request further information. This may be in the form of an e-mail or the issuance of a support ticket. Telephone support queries shall always be accompanied by a corresponding written support request from Client, sent through the web or by e-mail to Service Provider.

Resolution times exclude any periods of time where Service Provider is waiting for issues such as an information from Client to debug an Error, confirmation that an issue has been resolved or web connectivity fails or slows significantly due to reasons which are not under Service Provider's sole responsibility and control.

PENALTIES

In the event that the IT System experiences Downtime anytime during any contractual year, for other reasons than scheduled or unscheduled maintenance under the terms of section "**AVAILABILITY OF THE SYSTEM** " of this SLA or any exclusion under the terms of section "**LIMITATIONS AND EXCLUSIONS** ", Client may be



entitled payment of [100%] of the Penalty Fee set forth hereunder per Downtime experienced.

Should Service Provider fails to comply with the support level objectives specified in section “**SUPPORT LEVEL OBJECTIVES**”, the following penalties shall moreover apply:

Non-compliance with an Error of severity:	Penalty per non-compliance event:
Fatal	5% of Penalty Fee
Severe	2% of Penalty Fee
Medium	1% of Penalty Fee
Minor	No penalty

The maximum amount of penalties due by Service Provider per contractual year hereunder is capped to [2,400 Euros].

THE PENALTY FEE DESCRIBED IN THIS SECTION PROVIDES CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR ERRORS.

For the purpose of this SLA, the Penalty fee is set as follows:

Yearly licensee fee for the IT System according to EULA: [2,400 Euros]

Penalty Fee = [2,400 Euros % 12 = 200 Euros]

This amount is exclusive of taxes.

PAYMENT REQUEST PROCEDURE

Requests for the payment of penalties must be made by e-mail to Service Provider’s contact person hereunder within fifteen (15) days of the non-compliance event for which penalties are requested, and must include:

- the date and time when the related Downtime or Error was reported,
- the duration during which the problem remained unresolved,
- the severity of the Error as set forth by Service Provider or Client by default.

EXCLUSIONS

Service Provider shall not be liable for the payment of any penalties not requested in accordance with the payment request procedure set forth in section “**Error! Reference source not found.**” or in connection with any Error or failure to meet the SLA that is caused by or associated with any of the following:

- scheduled or unscheduled maintenance under the terms of section “AVAILABILITY OF THE SYSTEM ” of this SLA,
- any exclusion under the terms of section 0 “NON-EXCLUSIVE SUBCONTRACTING ” of this SLA.

CONTACT PERSONS



Client and Service Provider nominate the following representatives who are responsible for the implementation and maintenance of the support services set forth herein:

For Client: [...]

For Service Provider: [...]

Either party can nominate new or substitute representatives by written notice to the other party.

SURVIVAL

Any payment obligations incurred pursuant to this SLA at the time of Term or Termination, will survive the expiration of this SLA or its Termination for any reason.