Model contracts for licensing interoperability information - SMART 2013/0044

The INTILA licence template (Interoperability Information Licence Agreement)

FINAL REPORT

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ABSTRACT

The INTILA is a configurable and adaptable model licence, which is proposed as a template to license Interoperability Information (including API's, formats and protocols) in order to allow the licensees to design and exploit licensee interoperable products. It should allow licensors and licensees to reduce transaction costs by selecting, using and adapting a set of commonly accepted contract terms. If not used as a template, the INTILA could also be used as a check list and should raise the users' awareness on some key licensing issues to be addressed and negotiated by the parties. It should help companies to define a clear, unambiguous and legally consolidated framework that is favourable to the development of products interoperable with their technologies. The Licence is drafted neutrally to cover patents, copyrights and trade secrets. It suggests many options and alternatives, to be chosen from according to the nature of the product and the licensor's legal, commercial, technical or political objectives and strategy. The clauses and options are commented and explained in a "elucidations and comments" section which is conveniently placed in the right column of the document.

RÉSUME

L'INTILA est un modèle de licence adaptable et configurable qui est proposé comme canevas pour concéder sous licences des Information d'Interopérabilité (ce qui comprend APIs, formats et protocoles) afin de permettre aux bénéficiaires de concevoir et exploiter des produits interopérables. Il devrait permettre aux concédants et licenciés de réduire les coûts de transaction grâce à la sélection et l'utilisation d'un ensemble de termes contractuels communément acceptés et considérés comme sûrs par une large communauté. À défaut d'être utilisé comme modèle, l'INTILA pourra tout autant servir comme outil de vérification et devrait sensibiliser les utilisateurs quant aux questions clés à traiter et devant être négociées par les parties au sein de la licence. Il devrait permettre d'aider les entreprises à définir un cadre clair, non ambigu et juridiquement solide, favorisant le développement de produits interopérables avec leurs technologies. La licence est rédigée de manière neutre pour couvrir aussi bien les brevets que les droits d'auteur et les secrets d'affaires. Elle suggère de nombreuses options et alternatives qui devraient être sélectionnées en fonction de la nature des produits, de la stratégie et des objectifs légaux, commerciaux, techniques et politiques de l'entreprise. Ces clauses et options sont commentées et expliquées dans une section intitulée « elucidations and comments » qui est utilement placée dans la colonne de droite du document.

EXECUTIVE SUMMARY

In the framework of the Digital Agenda for Europe, the Commission would like to promote the licensing of non-standardized interoperability information by developing and making available to any user a “variable geometry” or configurable model licence.

Such model licence should allow licensors and licensees to reduce transaction costs by selecting and using a set of commonly accepted contract terms which are considered safe by a large community.

The aim of this study is to propose such configurable and adaptable model licence, which we suggest to call INTILA (acronym for “**Int**eroperability **I**nformation **L**icence **A**greement).

The model licence is only a set of suggested clauses, options and/or alternatives that could be worth considering when licensing interoperability information. It should help companies to define a clear, unambiguous and legally consolidated framework that is favourable to the development of products interoperable with their technologies. The model licence is provided on a non-mandatory basis, and it goes without saying that owners of interoperability information should remain completely free to decide if and how they wish to license their IP (subject to mandatory legal requirements). This licence model is voluntary, may need to be adapted to the particular sector or environment at issue, and may also not be applicable for certain situations.

Some options are provided, to be chosen from according to the licensor's legal, commercial, technical or political objectives and strategy, and which are further explained in the “licence template and manual” version of the text. The licensor should be cautious in his selection, as the combination of some of the options may lead to inconsistencies. Furthermore, the licence must be adapted to each specific situation: some parts need to be completed by the users. The preliminary remarks aim to raise the users' awareness on those important issues.

a) Interoperability information: some technical aspects

Interoperability information, which is also called in the software industry “Software Interfaces”, includes three classical categories: API (Application Program Interfaces), Protocols and Formats.

A Protocol is a common set of communication rules and instructions for message exchange between systems.

An API is a set of rules or routines by which an application program allows another application program to work directly with it, by calling its functions.

A Format refers to the way data is encoded and saved within a file.

The interfaces are usually described in specifications, which are formal documents that set forth in detail the exact way of implementing the interoperability mechanism. In other words, it serves as a guideline and continuing reference point for the developers that are programming the interoperating code.

The content of interoperability information licences normally differ from one technology to another. The INTILA template has been conceived to be as technologically neutral as possible. It is likely that the template needs specific modification to best suit the technology that is licensed.

b) Horizontal and vertical interoperability

This initiative aims to boost innovation and competition and to reduce lock-in effects by fostering

- vertical interoperability (namely the possibility to develop complementary products or systems that are built upon the products or systems – generally platforms – the Interoperability Information of which is licensed); and
- horizontal interoperability (namely the possibility to create similar and/or substitutable products or systems or allowing for similar or complementary products to share data and information that have been prepared using different technologies or systems).

From a business prospective, vertical interoperability allows the development of downstream markets, whereas horizontal interoperability enhances data exchanges between interactive (competitive and/or non-competitive) products.

The model licence has been drafted so that the licensor can configure the licence to allow horizontal and/or vertical interoperability. The two situations are however very distinctive from a business strategy perspective, and could imply many differences from a licensing point of view (granted rights, conditions, consideration, royalties, liabilities, etc.). These different objectives should therefore largely influence the configuration of the licence.

c) Legal framework

The three main legal protections that could apply to interoperability information are copyrights, patents and trade secrets (as explained in the Commission' SWD (2013) 209 on the "analysis of measures that could lead significant market players in the ICT sector to license interoperability information").

Copyrights are exclusive rights that are granted to any original work (including software & specifications) and that protect original forms or expressions. They do not protect ideas nor functionalities (ECJ's decision SAS v. World Programming C-406/10). Copyrights are granted by law automatically and at no cost to any original work expressed in an expression form. No administrative action is needed to get copyright protection: it applies as soon as the original work is created.

Patents protect inventions, namely products or processes that bring technical solutions to technical problems. In Europe, the European Patent Convention (EPC) expressly excludes *computer program as such* from the patentable subject matter. Notwithstanding the political debate on "software patentability", patents are more and more granted on computer implemented inventions. To get a patent, the inventor must identify the invention and claim patent protection on its novel and inventive features. The inventor must therefore take administrative actions to be granted a title by the competent administration. A patent is therefore quickly identifiable by its reference codes, and its scope is defined by the patent's claims.

Trade secrets are valuable information on the companies' know how or any other knowledge that the company keeps secret to safeguard a commercial and competitive advantage. Trade secret law is currently far from being harmonized and the rights that it grants to trade secrets owners are different from a country to another (note however that the Commission adopted a

proposal for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure on the 28th of November 2013, which aims to harmonise the Member States' legislations on the matter and to provide enforcement measures[1]). In communications with third parties (such as business partners) trade secrets are usually protected by non-disclosure agreements, which are contractual protections. In a broad sense, trade secrets are deemed to be part of the IP rights family, even though the legal mechanisms lying behind the concept are sometimes very different.

Three IP rights are concerned, which have very different natures and economic *rationale.* They protect different objects, have different scopes and grant different exclusive rights. The INTILA licence template has been drafted so as to cover the specific features of the three IP rights.

The intellectual property exclusive rights covered by the licence template are subject to limitations, exceptions and exhaustion. The INTILA licence template does not limit in any way the scope of these limitations. For instance, the licence template does not limit the exceptions contained in Articles 5 and 6 of the Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (the "Software Copyright Directive") which allow some reverse-analysis and decompilation activities to obtain and use information which is necessary to achieve interoperability.

1 COM(2013) 813 final, 2013/0402/COD

SOMMARIE

Dans le cadre de l'Agenda numérique européen, la Commission européenne souhaite promouvoir l'usage de licences spécifiques aux informations d'interopérabilité non standardisées en élaborant et mettant à disposition de tous un modèle de licence configurable dit à « géométrie variable. »

Un tel modèle de licence devrait permettre aux concédants et licenciés de réduire les coûts de transaction grâce à la sélection et l'utilisation d'un ensemble de termes contractuels communément acceptés et considérés comme sûrs par une large communauté.

Cette étude vise donc à proposer un modèle de licence adaptable et configurable que nous proposons d'appeler INTILA (pour « **Int**eroperability **I**nformation **L**icence **A**greement »).

Ce modèle de licence est en réalité un jeu de clauses suggérées, d'options et/ou d'alternatives qui méritent d'être considérées lorsque sont concédées sous licence des informations d'interopérabilité. Il devrait permettre d'aider les entreprises à définir un cadre clair, non ambigu et juridiquement solide, favorisant le développement de produits interopérables avec leurs technologies. Ce modèle de licence est fourni dans une logique non contraignante, les propriétaires d'informations d'interopérabilité restant bien entendu totalement libres de décider si, et comment, ils souhaitent exploiter leur PI (dans le respect des exigences légales obligatoires). L'utilisation de ce modèle de licence est volontaire, il peut nécessiter un certain nombre d'adaptations afin de se conformer aux règles spécifiques à un secteur ou un environnement particulier. En outre, il peut également ne pas être applicable à certaines situations.

Le choix entre les différentes options proposées dans ce modèle doit être fait selon les stratégies et les objectifs légaux, commerciaux, techniques et politiques de l'entreprise. Ces options sont expliquées plus en détail dans la version du texte agrémentée de commentaires intitulée « Modèle de licence et Manuel ». Le concédant devra veiller à ce que la sélection ou la combinaison d'options ne conduisent pas à certaines incohérences. De plus, la licence doit être adaptée aux spécificités de chaque situation : certaines parties doivent absolument être complétées par les utilisateurs. Les remarques préliminaires ont vocation à les alerter au sujet de ces questions essentielles.

a) Information d'interopérabilité : quelques aspects techniques

La notion d'information d'interopérabilité, aussi désignée sous le nom « d'interface logicielle », recouvre trois catégories classiques : les APIs (Application Program Interfaces), les Protocoles et les Formats.

Un Protocole est un ensemble de règles et instructions de communication permettant l'échange de messages entre systèmes.

Une API est un ensemble de règles ou de routine grâce auxquelles un programme autorise une autre application à travailler directement avec elle, par l'appel de ses fonctions.

Le terme Format fait référence à la manière dont des données sont codées et sauvegardées dans un fichier.

Ces interfaces sont généralement décrites dans des spécifications, c'est-à-dire des documents formels détaillant la manière exacte d'implémenter les mécanismes d'interopérabilité qu'elles véhiculent. Autrement dit, elles constituent des lignes directrices et des points de repère pour les développeurs tout au long de leur parcours de programmation.

Le contenu des licences en matière d'informations d'interopérabilité diffère nécessairement d'une technologie à l'autre. Le modèle INTILA a donc été conçu pour être aussi neutre que possible d'un point de vue technologique. Il est cependant probable qu'il nécessitera certaines modifications pour s'adapter au mieux à la technologie donnée en licence.

b) Interopérabilité horizontale et verticale

Cette initiative a pour ambition de stimuler l'innovation et la concurrence, tout en réduisant les effets de verrouillage (lock-in) en encourageant :

L'interopérabilité verticale (à savoir la possibilité de développer des produits ou des systèmes – généralement des plates-formes – qui s'appuient sur des produits ou des systèmes dont les informations d'interopérabilité sont données en licence) ;

L'interopérabilité horizontale (à savoir la possibilité de créer des produits ou des systèmes similaires ou substituables ou de permettre à des produits similaires ou complémentaires de partager des données et des informations qui ont été préparées en utilisant des technologies ou des systèmes différents).

D'un point de vue commercial, l'interopérabilité verticale permet le développement de marchés en aval, tandis que l'interopérabilité horizontale améliore les échanges de données entre des produits interactifs (concurrents ou non).

Le modèle de licence a été rédigé de telle sorte que le concédant reste en mesure de configurer son contenu afin qu'il permette l'interopérabilité horizontale et/ou l'interopérabilité verticale. Correspondant à des stratégies commerciales différentes, la poursuite de l'un ou l'autre de ces modèles d'interopérabilité peut impliquer des divergences importantes dans le contenu de la licence, que ce soit en termes de droits octroyés, de conditions, de contreparties, de redevances, de responsabilités, etc. Il faut donc anticiper ces objectifs afin d'être en mesure de les prendre en compte au moment de la configuration de la licence.

c) Cadre légal

Le droit organise trois principaux types de protections susceptibles de s'appliquer aux informations d'interopérabilité : le droit d'auteur, le brevet et le secret des affaires (ainsi qu'expliqué par le DTS (2013) 209 de la Commission « analysis of measures that could lead significant market players in the ICT sector to license interoperability information »).

Le droit d'auteur confère un droit exclusif sur toute œuvre originale dans sa forme ou son expression (logiciels et spécifications incluses). Il ne protège ni les idées ni les fonctionnalités (décision de la CJE SAS v. World Programming C-406/10). La loi reconnaît automatiquement et gratuitement un droit d'auteur à l'auteur de toute création originale. Aucune démarche administrative n'est nécessaire pour obtenir cette protection : elle s’applique du seul fait de la création de l’œuvre, et s'étend au fur et à mesure de sa conception.

Les brevets protègent les inventions, c'est-à-dire les produits ou les procédés qui apportent une solution technique à un problème technique. En Europe, la Convention européenne des Brevets (OEB) exclut de manière expresse les programmes informatiques du champ de brevetabilité. En dépit du débat sur la "brevetabilité des logiciels", de plus en plus de brevets sont accordés aux inventions mises en œuvre par ordinateur. Pour obtenir un brevet, l'inventeur doit identifier précisément son invention ainsi que les revendications par lesquelles il entend protéger ses caractéristiques nouvelles et inventives. L'inventeur doit entreprendre des démarches administratives pour obtenir un titre auprès de l'autorité compétente. Un brevet est donc facilement et rapidement identifiable grâce à ces références, et son étendue est limitée aux revendications qui y figurent.

Les secrets d'affaires sont les informations stratégiques de l'entreprise concernant son savoir-faire ou toute autre connaissance qu'elle souhaite garder secrète pour conserver un avantage compétitif. Les dispositions relatives au secret des affaires sont actuellement loin d'être harmonisées au niveau européen, et les droits garantis aux détenteurs de ces secrets d'affaires diffèrent d'un pays à l'autre (notons cependant que la commission a adopté le 28 novembre 2013 une proposition de Directive quant à la protection des savoir-faire et des informations commerciales non divulguées (secrets d'affaires) contre l'obtention, l'utilisation et la divulgation illicites, qui vise à harmoniser les législations des états membres sur le sujet et prévoit un certain nombre de mesures coercitives[2]). Dans le cadre d'échanges avec une partie tierce (un partenaire commercial par exemple), le secret des affaires est généralement renforcé par un accord de confidentialité qui reconnaît au propriétaire du secret une protection contractuelle. Globalement, il peut être considéré que le secret des affaires appartient à la famille des droits de propriété intellectuelle, même si les mécanismes légaux qui sous-tendent le concept sont parfois très différents.

Trois droits de propriété intellectuelle sont donc concernés, avec pour chacun une nature et une logique économique qui lui sont propres. Dès lors, ils diffèrent par leur objet, leur champ d'application et les droits exclusifs qu'ils concèdent. Le modèle de licence INTILA a été rédigé de façon à couvrir les caractéristiques spécifiques de chacun de ces droits.

Les droits exclusifs de propriété intellectuelle couverts par le modèle de licence sont en outre soumis à des limitations, des exceptions et à la théorie de l'épuisement des droits. Le modèle de licence INTILA ne réduit en aucune façon l'étendue de ces limitations. Par exemple, le modèle INTILA ne limite pas le bénéfice des exceptions contenues aux articles 5 et 6 de la Direction 2009/24/EC du Parlement Européen et du Conseil du 23 avril 2009 sur la protection juridique des programmes d'ordinateur (reconnaissant des droits d'auteur sur les logiciels), qui autorisent certaines activités de rétro-ingénierie et de décompilation afin d'obtenir les informations nécessaires à l'interopérabilité.

2 COM(2013) 813 final, 2013/0402/COD

INTILA

Interoperability Information Licence Agreement

version 1, July 2014

- LICENCE TEMPLATE AND MANUAL -

PRELIMINARY REMARKS

The INTILA licence model is designed to provide technology owners and possible licensees with a template of licence and examples of clauses that can be used to license interoperability information. The licence model is only a set of suggested clauses, options and/or alternatives that could be worth considering when licensing interoperability information. It is provided on a non-mandatory basis. Owners of interoperability information remain completely free to decide if and how they wish to license their IP (subject to mandatory legal requirements).

This model **requires** configurations and/or adaptations (modifications) to accurately apply to your interoperability information. For this reason, you must clearly state that your version is based on the INTILA licence model but differs from the INTILA licence itself. This is also the reason why you are invited to distinguish your licence by adding in its title the name of the technology that it covers.

Particular attention has been paid to use a wording that remains accessible and easy to understand, notably for non-lawyers. Nevertheless, it uses a specific legal vocabulary that has to be referred to in such kind of document. The document might require adaptations to comply with the applicable laws (on National or European level). For instance, the users must comply with Article 101 of the Treaty on the Functioning of the European Union, which forbids certain anti-competitive practices. Accordingly, they are strongly advised to ensure that the licence complies with and benefits form the "block exemption" system provided by the European regulations on technology transfer agreements (commission regulation n° 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements) the compliance of which has to be assessed on a case by case basis. It is therefore advised to consult a lawyer before using this licence model.

This licence model is an intellectual property licence template that aims to grant some rights of use, which would otherwise infringe the exclusive rights of the Licensor. It is not, and should not serve as a service agreement. For instance, the INTILA licence model could be used to authorise the development of products that interact with other elements via an intellectual property protected API (application program interface) but it is not a model for SaaS (Software as a Service) agreements, even though such services are sometimes accessible and usable only through an API.

If the Licensor implements its interoperability information in a software or a similar element of his own that he decides to distribute under a free or open source software (FOSS) licence, the use of this template in such distribution should normally not be necessary: the interoperability information should indeed normally (under reserve of a case by case analysis, and this is highly dependent on the FOSS licence used) be considered as being part of the material that is licensed under such FOSS licence. It is advisable in that case to use a FOSS licence that covers not only copyrights, but patents as well (such as the Apache version 2, the MPL version 1.1 or 2.0, a licence of the "GNU Licences family" version 3, the EUPLv1.1, or a licence of the CeCILL family for instance).

The present INTILA model and manual version is presented with two columns: the left side with legal text and the right side with elucidations, remarks and recommendations (also referred to as "the manual").

A version without the present preliminary remarks and the elucidations is available.

INTILA provides a core text, modules with several options and annexes, which can be used as follows:

1. The core text is the main body of the text. Options are highlighted in grey as well as other items where variable numbers or data should be adapted.
2. The description of the Interoperability Information should be filled in (Annex 1).
3. Two more annexes may also have to be filled in, which pertain to the licensing scheme: Intellectual Property in the Interoperability Information (Annex 2) and Royalties Calculation and Payment Scheme (Annex 3).
4. Depending on the options that have been selected, other annexes might have to be added as well.

Some options are provided, to be chosen from according to the licensor's legal, commercial, technical or political objectives and strategy, and which are further explained in the manual. The licensor should be cautious in his selection, as some combinations of options may lead to inconsistencies. For instance, if the licensor opts for a royalty free and public licensing strategy, the licence can be offered to any possible licensee (without explicit identification), asserting trade secrets rights becomes most probably irrelevant as well as Article 3bis on confidentiality obligations, and Annex 3 on the royalty calculation becomes useless and should therefore be removed.

<tech. name> Interoperability Information Licence Agreement **(<tech. name> - INTILA)**	**Elucidations & Comments** Replace (Tech Name) with the name of your Technology.
This Interoperability Information Licence Agreement (hereunder referred to as the "Licence" or the "Agreement") is entered into between • [licensor's details], hereunder referred to as the "Licensor"	Detail all the corporate information of the Licensor.
and	LICENCEE IDENTIFICATION OPTIONS: The Licensee can be nominatively identified (option 1) or remain unidentified (option 2).
• [Option 1] the person or company identified as follows: • Licensee full legal name: • Type of legal entity: • Street address: • ZIP code, city: • State & country: • Official company registry number: • duly represented by : First name & family name : Position :	**Option 1** should be adopted in case of controlled one to one licensing, be it royalty free or in exchange of a payment (in this last case, this option is mandatory).
• [Option 2] any individual or a legal entity exercising rights under this License,	**Option 2** is more likely to serve public licensing strategies, the licence being offered to whoever needs it provided that all the terms and conditions thereof are accepted and complied with.
hereunder referred to as the "Licensee", This Agreement is effective as of the date it has been signed or otherwise unconditionally and irrevocably accepted on behalf of both parties (the "Effective Date"). The provisions of this Licence can be accepted by clicking on an icon "I agree" placed under the bottom of a window displaying the text of this Licence or by affirming consent in any other similar way, in accordance with the rules of applicable law. Clicking on that icon indicates your clear and irrevocable acceptance of this Licence and all of its terms and conditions. Similarly, you irrevocably accept this Licence and all of its terms and conditions by exercising any rights granted to You by Article 2 of this Licence, such as the Development or the Exploitation of Licensee Products.	The Licence acts as an offer to contract until acceptance by the Licensee. If the Licensor opts for the option 1 above, it is strongly advised to obtain a clear acceptance of this License by the Licensee (by way of a signature). In cases where the Licensee's signature cannot be obtained (which is quite likely if the Licensor opts for the option 2 above), then the acceptance by the Licensee is anyway deduced from its behaviour. For instance, this clause provides that the simple Development or Exploitation of Licensee Products is enough to deduce such acceptance. Such mechanism is quite common in public licences.
The following Annexes are included and part of the Agreement: • Annex 1: Description of the Interoperability Information	The annexes are important parts of the licence that must be completed and adapted on a case by case basis. For instance, in case of Distribution of

• Annex 2: Intellectual Property on the Interoperability Information • Annex 3: Royalties Calculation and Payment Scheme • [List all the other annexes if any – cfr. further options below]	Licensee Products to End Users, Annex 4 could be a sample of End User Licence Agreement granted by Licensee to the End User under the terms and conditions of which the End User is entitled to use the Licensee Product.
Article 1 - Definitions	
Capitalized terms used in this Agreement are defined in this Article 1 or elsewhere in this Agreement. The following terms have the following meaning:	Definitions are very useful to respect the homogeneity of the document and to refer to complex elements with single words or small expressions.
"**Licensee Product**" means any data set, computer file, computer program, or any electronic hardware device, or any combination of the foregoing, which implement the Interoperability Information *or which creates, writes, reads or displays files that implement the Interoperability Information* in accordance with the Technical Specification and in a way that would infringe the Licensed Intellectual Property if the Licensee did not benefit from the Licence Grant provided in this Agreement under Article 2.	The Licensee Product is a key concept as it is the element that is created by the Licensee and which is - either an implementation of the Interoperability Information (e.g. an interoperable device that implements the licensed protocol or API) or - - a tool that will be used to create or use other elements implementing the information (e.g. a software that will produce files in the licensed format). It is important to note that Licensee Products are not necessarily products that are distributed to End Users. For instance, a software implementing a protocol or an API and which is only deployed on the Licensee's servers to provide services to clients (Software as a Service) is also to be considered as a Licensee Product.
"**End User**" means a third party customer (individual or entity) to which a copy of, or access to, a Licensee Product or a service based thereon is Distributed (as defined in Article 2.1) or otherwise provided for this third party customer's own purposes and not for sub-licence or further distribution to others.	End Users are third parties which are using the Licensee Products.
"**Interoperability Information**" means the interoperability information identified in Annex 1 and described and/or contained in the corresponding Technical Specifications. [Optional add-on] The Licensee shall have the right to request any additional information that is strictly necessary to reach the aimed interoperability if such information is not provided in the Technical Specifications, and if this request is reasonably proven and documented. Such additional information, once provided by the Licensor as soon as reasonably possible, will be part of the licensed Interoperability Information.	This licence template has been drafted in order to be applicable to any kind of interoperability information. The template does therefore voluntarily not refer to any particular technology, so as to remain technology neutral. Annex 1 is where Licensor identifies the Interoperability Information covered by this Agreement.
"**Intellectual Property**" means any and all intellectual property rights related to the Interoperability Information, including all of the following and all rights in, arising out of, or associated therewith: (i) procedures, designs, inventions, and discoveries; (ii) works of authorship, copyrights and other rights in works of authorship; and (iii) know-how, show-how and trade secrets on a worldwide basis, including all Patents issued or issuable thereon, but excluding all trademarks, trade names, or other forms of corporate or product identification. **"Patents"** means all classes or types of patents (including, without limitation, originals, divisions, continuations, continuations-in-part, extensions, re-examinations and reissues, as well as any patent-like intellectual property rights protecting inventions such as Utility Patents), and applications for these classes or types of patent rights in all countries of the world that are owned or controlled by the Licensor during the term of this Agreement. [Optional add-on : annexing a further description of the rights covered] Intellectual Property includes the intellectual property rights as identified in Annex 2 as well as any other Licensor's intellectual property right (including any third party's intellectual property rights that the licensor is authorised to sublicense) to the Interoperability Information, whether already acquired or acquired after the Effective	Likewise, the licence is drafted neutrally to cover patents, copyrights and trade secrets. The definition of Intellectual Property is drafted in an all-encompassing manner, but excludes distinctive signs such as trademarks or trade names. As an option, for transparency reasons, the Licensor is invited to list the intellectual property rights that he asserts to his technology in an Annex 2. Note that it is not industry standard to identify each and any IP right on a licensed technology, hence the importance of describing the licensed Interoperability Information in Annex

Date, that would otherwise necessarily and unavoidably be infringed by the Licensee when exercising his rights to implement the Interoperability Information and exploit Licensee Products according to the licence grant as provided in Article 2.	1.
"**Technical Specification**" means the documentation containing the technical description of the Interoperability Information, including updates and corrections per Article 3, provided by the Licensor under this Agreement.	To ensure interoperability, the technology must be described and explained by way of specifications. This licence template does not allow the Licensee to deviate from the specifications nor to create derivative technologies. The Licensor decides how the technology evolves. However, the Licensor could animate a community to update its technology and Licensees could be invited to suggest modifications.
Article 2 - Licence Grant	
2.1 Licence	
Subject to all provisions of this Agreement and conditioned on the Licensee's compliance with Article 2.2 (conditions et limitations) and Article 3 (consideration), the Licensor hereby grants to the Licensee the following worldwide, non-exclusive, non-transferable and personal licence, without right to sublicense (save as expressly permitted in the following sub-sections and articles) on the Licensor's Intellectual Property on the Interoperability Information for the duration specified in Article 10, to copy, reproduce, use and distribute the Interoperability Information and the Technical Specifications, only for the following purposes:	This section defines the allowed purposes for the rights that are licensed to the Licensee. The licence's duration can be the duration of the specific intellectual property right licensed, or a shorter period. See Article 10 – Term & Termination of the License. By default, for controllability reasons, sublicensing is forbidden, which jeopardizes to a large extent the implementation of the Interoperability Information in Open Source licensed software. On the use of the INTILA licence in connection with open source licensing, please refer to the preliminary remarks and to the optional article 4bis and the corresponding comments below.
• (i) to Develop Licensee Products (to "**Develop**" meaning - in this Article and elsewhere in this Agreement - to design, develop, make or have made, and/or produce or have produced Licensee Products in accordance with the Technical Specification);	The first necessary step is to create the Licensee Product that implements the Interoperability Information.
• (ii) and to Exploit Licensee Products in one or more of the way(s) defined as follows (hereunder collectively referred to as the "**Exploitation**" of the Licensee Products or to "**Exploit**" Licensee Products): [Select one or more options between the following]	**LICENSED EXPLOITATION RIGHTS OPTIONS** This Licensee Product is – supposedly – created to be somehow exploited by the Licensee. The different purposes of the exploitation rights have been listed on the basis of the level of externalisation of the Licensee Products.
◦ a) to Internally Use Licensee Products; (to "**Internally Use**" meaning – in this Article and elsewhere in this Agreement – to install, use and deploy the Licensee Products and to make them available to the Licensee' personnel, for use internally by the Licensee for the purpose of general business practices but not to offer Licensee Services or for Distribution purposes;	The Licensee Product is only used internally, excluding any SaaS scheme outside the company (i.e. to offer services to third parties). This would be the minimal level of the licence.
◦ _) and to offer Licensee Services; ("**Licensee Services**" means – in this Article and elsewhere in this Agreement – services	This case typically covers remote computing schemes (such as SaaS). It

offered by the Licensee to third parties, including End Users, using the Licensee Products, but without Distributing the Licensee Products. Licensee Services include providing remote access to third parties to the functionalities of the Licensee Product over a network without enabling such third parties to make or receive copies or units of the Licensee Product).	covers both direct and indirect interactions with End Users.
◦ _) and to Distribute Licensee Products to Downstream Acquirers; ("**Distribute**" or "**Distribution**" means – in this Article and elsewhere in this Agreement – licensing, distributing, offering for sale, selling, leasing, providing online access to, communicating, exporting, importing or otherwise making available the Licensee Products in any manner to a third party – referred to as the **Downstream Acquirers** – so that such third party is provided with the Licensee Product). In case of Distribution, the Licensee is allowed to grant sub-licenses to the Downstream Acquirers to allow End Users to use, in conformity with the Licensee's EULA, the acquired copy or unit of the Licensee Product. ("**EULA**" means - in this Article and elsewhere in this Agreement - the End User Licence Agreement granted by the Licensee to third parties and End Users in order to allow them to use the Licensee Products that they acquired).	This option covers any cases where third parties (Downstream Acquirers) receive copies/samples of the Licensee Products. Downstream acquirers can be End-Users or distribution intermediaries. In such case, sublicensing will often be necessary in order to allow End Users to use the Licensee Products conforming to their functions. For instance, this could be the case where such products are software to be installed by the End Users. If the interoperable information incorporates a patented method, the Licensee Product could be a means for the End Users to apply the patented method. End Users therefore would need a licence as they might not be protected by any right exhaustion principles. This sublicensing possibility is restrictive as it only aims at allowing End Users to use the Licensee Products according to an EULA. It would not cover the sublicensing of the Interoperability Information by the licensee under an open source licence. It is common practice for the parties to an Interoperability Information Licence to agree on a EULA template, which is annexed to the Agreement.
• _) and to [other : complete the list]	The licensor or the parties might want to specify other types of exploitation to be covered by the licence.
In the countries where moral rights apply, the Licensor waives his/her right to exercise his/her moral rights to the extent allowed by law in order to make effective the licence of the economic rights here above listed. The Licensor declares that it used its best efforts to procure that the transferor(s) from whom it acquired the Intellectual Property are also waiving their moral rights to the same extent and on the same conditions.	An often encountered "preventive" clause whose aim is to cover moral rights issues. Generally, moral rights protect natural persons and are often not transferable. The second sentence aims to invite the Licensor to consider and use its best efforts to cover the possible moral rights issues when acquiring the Intellectual Property (from employees or contractors for instance).
The rights granted in this Article 2.1 are the only rights granted under this Licence. No additional rights or licences will be implied from the distribution or licensing of Licensee Products under this Licence. No licence is granted by the Licensor for any purpose other than the creation of interoperable Licensee Products. Furthermore, the licence granted to the Licensee in this Agreement do not include any right: • (i) to implement the Interoperability Information or use Licensed Intellectual Property other than as expressly provided in this Article, • (ii) or to modify the Technical Specification or to extend or change any of the features described in the Technical Specification, unless and only insofar as necessary to achieve interoperability with the products of the Licensor or other products implementing the Interoperability Information.	The INTILA Licence's purpose is to promote and disseminate the Interoperability Information needed to create interoperable Licensee Products as stipulated above, not to create other products nor to modify the Interoperability Information. Any substancial modification brought by the Licensee to the Technical Specifications as implemented in his product could jeopardize the interoperability objectives. It is therefore assumed that the

	Licensor wants to control the evolution of its technology. Of course, the Licensor could invite licensees to share their views on the features of the Interoperability Information that they would like to see evolve and to suggest modifications.
2.2 Conditions and limitations	
The grant of the rights mentioned above is subject to some conditions and limitations imposed on the Licensee. Those restrictions and obligations are the following:	The violation of these conditions and limitations will automatically terminate the Licence (see Article 8 - Term & Termination of the Licence)
2.2.1 Strict implementation & implementation of the last Technical Specification No licence is granted by the Licensor under Article 2.1 above, for infringements caused by: (i) Licensee and any other third party's modifications of the Interoperability Information or Technical Specification that would alter the interoperability of the resulting Licensee Product, or (ii) any combination of the Interoperability Information or Technical Specifications with other technology that would alter the interoperability of the resulting Licensee Product. [Optional add-on regarding the updating of the Technical Specifications] If and when the Technical Specifications are updated in application of Article 3, the Licensee shall promptly and on a best effort basis modify its Licensee Products so that each Licensee Product Exploited after the updating by Licensee comply therewith within a reasonable period of time after such updating not to exceed six (6) months. This article is without prejudice to the right of the Licensee to acquire the Interoperability Information through other means than set out in this agreement, in particular Article 6 of Directive 2009/24/EC on the legal protection of computer programs.	Cfr. explanations for art. 2.1 §3 above. The licence allows implementations of the Interoperability Information (as specified in the Technical Specifications and without modification). Even though the INTILA licence is most of all an Intellectual Property licence, it is a used practice in interoperability information licences to provide clauses on the features and quality of the resulting Licensee Product. Such clauses could have a repellent effect on possible licensees. An example of such clause is provided as an optional add-on, but users should seriously assess the need and opportunity to add such Licensee Product related conditions, and to adapt them to their actual position in the market, the technologies and the products involved, their business models, etc.
2.2.2 No contradictory obligations The Licence Grant in Article 2.1 do not include any licence, right, power or authorisation to, and Licensee will not subject the Interoperability Information, whether as such or as implemented in the Licensee Products, in whole or in part, to any of the terms of any agreement, license or EULA that requires terms or conditions that are contrary to the scope of this Agreement or to the Licensee's obligations under this Agreement.	This article raises the awareness of the Licensee's obligation to strictly comply with the licence, including when contracting with or granting sub-licences to third parties.
[Additionaly, you may add further conditions and limitations options.]	This part of the licence allows the Licensor to adapt the Agreement to its strategy and business by adding conditions or limitations to the Licence Grant.
[ ] References to the Licensor [SUB-OPTION 1 : NO REFERENCE TO THE LICENSOR] Licensee shall not use or allow third parties to use in the Licensee Products, or in their company name, product name, product packaging, product documentation, advertising, publicity, or other promotional activities, any name, trade name, trademark, trade dress, or other designation of the Licensor or its affiliated companies or of Licensors products and technologies, except as allowed to describe the implementation of the Interoperability Information in the Licensee Product. The Licensee agrees not to refer to the Licensor or its affiliated companies, the Interoperability Information, this Agreement or any provision thereof in any promotional activity associated with the Interoperability Information, without the	The Licensor can determine whether or not the Licensee may or must refer to the Licensor and its technology in the Licensee's promotion material.

express prior written approval of the Licensor.	
[OR SUB-OPTION 2 : PERMITED REFERENCE THE TO LICENSOR] Any reference by Licensee to Licensor shall be done in compliance with the Reference and Trade Mark Use Policy as set forth in Annex [_].	It is advisable for the Licensor to adopt a Reference and Trade Mark Policy and to annex it the Licence. This sub-option will permit some general references that are done in compliance with this policy.
[OR SUB-OPTION 3 : MANDATORY REFERENCE TO THE LICENSOR] References to the use of the Interoperability Information or the Exploitation of the Licensee Product shall be done in compliance with the Reference and Trade Mark Use Policy as set forth in Annex [_].	This sub-option obliges the Licensee to refer to and attribute the Licensor accordingly to Licensor's Reference and Trade Mark Policy, but limited to the use of the Interoperability Information.
[_] Authorized Licensee Products The License Grant under Article 2.1 is limited to the category(ies) of Licensee Product(s) listed and/or described in Annex [_]	In order to further limit and control the use of its technology, the Licensor could limit its authorisation to specific Licensee Products. This clause could be used by the Licensor to restrict the effect of the licence to vertical interoperability only (if possible and legally allowed depending on the facts of the case). Such type of restriction would be incompatible with the open source licensing of the Licensee Products.
[_] Conformance Licensee agrees that each Licensee Product that is Exploited by Licensee shall fully conform to the normative portions of the Technical Specification. If a national or international standards institution approves a conformance specification with respect to the Technical Specification, Licensee shall check if the Licensee Product Exploited by Licensee after such approval shall comply with additional specifications. If the Interoperability Information is adopted as a standard by a Standard Institution and if it has to be licensed under specific terms and conditions imposed by such Standard Institution and accepted by Licensor in such framework, Licensee will have the right to terminate this Agreement in order to become a licensee under the new terms and conditions offered by the Licensor in such circumstances. [OPTIONAL ADDITION : CONFORMANCE TEST SUITE] In order to allow the Licensee to check if its Licensee Products implement all the mandatory features of the Interoperability Information as specified in the Technical Specification, the Licensor might make a conformance test suite, which would be available to the Licensee, and the results of which would serve as a reference to assess the conformance to the Technical Specification.	Conformance and compliance clauses are quite common in Interoperability Information licences. Faulty implementations should generally be avoided as they are damageable to the reputation and adoption of the technology. This optional conformance condition should be seriously considered (and probably adapted or extended) if the licence is used in connection with critical products used in certain sensitive and highly regulated sectors (medical devices, transportation, etc.)
[_] Compliance and conformance control and audit a) For as long as the Licensee Exploits Licensee Products, and for two years after the later of (i) the year when this Licence expires or is terminated, or (ii) the last year in which the Licensee Develops or Exploits the Licensee Products, the Licensee shall maintain accurate and adequate books and records related to its compliance with this Licence. b) Upon the request of the Licensor from time to time, with at least 14 days' notice, the Licensee shall provide the Licensor with reasonable information concerning Licensee Products such as specifications and test data necessary to confirm compliance with this Licence. c) Upon the request of the Licensor from time to time, with at least 14 calendar days' notice, (i) the Licensee will provide access to the books, records and information as above mentioned under the point a) and b) to a nationally recognized	This clause completes the previous Conformance clause by providing the Licensor with the ability to perform audits. It is indeed in the Licensor's interest to control the implementation of the Interoperability Information in the Licensee Products, mostly in those cases where royalties are imposed to the use of the Interoperability Information.

independent certified auditor selected by the Licensor (the "Auditor"), and/or (ii) the Licensee will provide a sample of the Licensee Products to an independent unaffiliated third party designated by the Licensor (the "Tester"), who will have the right to Internal Use the sample for conformance and/or compliance test purposes. The access by Auditors and Testers to the Licensee's books, records, information and samples as provided in the present Article will be carried out under strict confidentiality. After the conclusion of the audit and/or testing, the Auditor and/or Tester will provide the Licensor with a report detailing only those results of the audit and/or testing regarding the compliance with this Agreement d) If any of the actions under the points b) and c) above reveal any non-compliance with this Licence, the Licensee agrees to pay the cost of the audit and/or test, to promptly correct that non-compliance, and to inform Licensor as soon as practicable on the solution adopted thereto. The foregoing is in addition to any other remedies that are available to the Licensor.	
[_] [other : complete the list]	Other conditions could be devised in order to adapt the licence to the Licensor's business model and commercial strategy.
Article 3 – Technical Specification	
The Licensor provides the Licensee with access to the complete Technical Specification for the Interoperability Information listed and/or described in Annex 1 (the original version of the Technical Specification) via its online site or other reasonable method determined by the Licensor from time to time as described in this Article 3. If and when the Licensor corrects or modifies the Interoperability Information, the Licensor will make the corresponding updated Technical Specification (the new version of the Technical Specification) available, by: • [_] posting of such update to the Licensor online site, • OR • [_] sending of an update notice to the Licensee per email to the Licensee's email address communicated above • OR • [_] [Other : describe the communication means and/or the protocol used in order to inform Licensee of the adoption of an updated version of the Interoperability Information] Each version of the Technical Specification will remain accessible as described in §1 of this Article during a period of at least one year as from the date of the publication of such version of the Technical Specification.	The Technical Specification is the set of requirements that should be satisfied by the Licensee Product in order for the latter to be fully interoperable. Licensor makes them available to the Licensee, and should also inform the Licensee of each update. The parties are invited to consider the best way to operate the smoothest transition from the previous version of the Technical Specification to the new one, according to the requirements of the sector and to the nature of the technology involved. Once the Technical Specification is updated, the Licensee has to update its production accordingly.
Article 3bis [Optional] – Confidentiality	This clause aims to protect trade secrets and confidential information. It must be stressed that such confidentiality clause would be irrelevant in any public licensing scheme.
The Licensor has invested significant efforts and expenses in developing the Interoperability Information. The Interoperability Information and the Technical Specification, and all non-public information and know-how contained in or derived from it (including, without limitation, as implemented in any Licensee Product) or disclosed to the Licensee by the Licensor under this Agreement are the Licensor's "Confidential Information". The Confidential Information does not include information which: (a) is or subsequently becomes publicly available without the Licensee's breach of any obligation of confidentiality to the Licensor under this Agreement, unless that information	If the Licensor asserts trade secrets on the Interoperability Information, such information should be protected by a Confidentiality Clause (also known as Non-Disclosure Agreement). This article 3 bis is an example of such clause. The Licensor should consider whether the use of such clause (and the assertion of trade secret protection) is

becomes publicly available in violation of any trade secret or other rights of the Licensor; (b) is or subsequently becomes known to the Licensee, without imposition of a confidentiality obligation, from a source other than the Licensor, on the condition that such disclosure does not result from any breach of an obligation of confidentiality to the Licensor with respect to that Confidential Information; (c) was independently developed by the Licensee without reference to any Confidential Information from the Licensor ; or (d) the Licensor has made available to anyone without obligations of confidentiality. During a period of [define a duration : 5 years, 10 years, other] starting at the Effective Date, the Licensee will retain in confidence the Confidential Information, will make no use of it except as permitted under this Agreement and will protect it by using efforts at least as great as the precautions it takes to protect its own most sensitive and valuable confidential information from unauthorized use or disclosure, provided that in no event may such level of protection be less than is reasonably necessary to maintain the confidentiality of such Confidential Information. The Licensee may disclose the Confidential Information to its employees, temporary personnel or independent contractors only on a "need to know basis" and under a suitable written non-disclosure agreement that does not permit disclosure or use except as permitted under this Agreement. The Licensee shall maintain marks of the Confidential Information of the Licensor. The present Article shall not be construed to limit either the Licensee's right to independently develop or acquire products without use of the Confidential Information. The Licensee may provide access to Confidential Information to a potential customer for evaluation purposes, on Licensee's premises and under a non disclosure agreement that provides for at least the same degree of protection as other non disclosure agreements used by the Licensee in its ordinary course of business to protect its most valuable confidential information, provided that in any event such level of protection must be at least that reasonably necessary to maintain the confidentiality of the Confidential Information. The Licensee may disclose Confidential Information in accordance with judicial or other governmental order, provided the Licensee gives the Licensor reasonable notice prior to such disclosure to allow the Licensor a reasonable opportunity to seek a protective order or equivalent. [If the option "REFRENCES TO THE LICENSOR" has been selected, this last part could be added:] Nothing in this Agreement prohibits the Licensee from disclosing the fact that it has entered into this Agreement and that it has implemented the Interoperability Information as long as Licensee complies with Article 2.2.3 (References to the Licensor) .	not conflicting with the Exploitation rights granted to Licensee. Indeed, one could imagine that in some cases, the Distribution of Licensee Products to End Users would equal to a public disclosure of the information that the Licensor would contradictorily like to keep confidential.
Article 4 – Consideration	
[Option 1] The License Grant under Article 2 is granted on the condition that the Licensees pays to the Licensor royalties calculated and to be paid according to the Royalties Calculation and Payment Scheme as established in Annex 3.	If the Licence is granted for a fee, the Licensor must provide in Annex 3 all information about the fees calculation and collection. Reference is made to the Guidelines for Valuing Interoperability Information (SMART 2013/0045)
[Option 2] The licence granted under Article 2 is granted royalty-free.	The Licensor might opt for a royalty-free licence in order, for instance, to maximize the implementation and reuse of its Interoperability Information.
Article 4bis [Optional] – Open Source Implementation Exception	
As a specific exception to the limitations and conditions of the Licence Grant under Article 2, Article 3 and Article 8, Licensee is allowed to implement the Interoperability Information in a software Licensee Product that it publicly Distributes [_] under any open source licence certified by the Open Source Initiative (and listed on the Open Source Initiative's website www.opensource.org).	The Licensor might want to favour or positively discriminate open source implementations of the Interoperability Information. The Licensor should however carefully analyse the impact that the use of this clause could have on its

OR

[_] under one or more of the licences specified in Annex [_].

The Licensee shall notify the Licensor of the open source licence(s) selected to Distribute the software Licensee Product (hereunder referred to as the "Selected Open Source Licence(s)") and of

[_] the publicly available network server through which the software Licensee Product is available for anyone, free of charge, to copy under the terms of the Selected Open Source Licence(s);

OR [if the access to the software Licensee Product is not free of charge and/or not publicly available]

[_] the way Licensor can obtain, free of charge, a copy of the software Licensee Product under the terms of the Selected Open Source Licence(s);

[SUB-OPTION 1: COMPLEMENTARY LICENCE LIMITED TO WHAT IS STRICLY NECESSARY FOR NON-INFRIGEMENT]

Upon such notification, the Licensor automatically grants to the Licensee, on a worldwide and non-exclusive basis, any complementary licence on the Licensor's Intellectual Property on the Interoperability Information and the Technical Specifications without which the Licensee could not license his software Licensee Product without breaching the terms and conditions of the Selected Open Source Licence(s).

These additional permissions may include the right for the Licensee to grant sub-licences on the Licensor's Intellectual Property on the Interoperability Information and the Technical Specifications in his capacity of Licensor of the Selected Open Source Licence, when and to the extent that this is required by the terms and conditions of the Selected Open Source Licence. In such case, when the Selected Open Source Licence provides a mechanism of "automatic licensing of downstream recipients", any downstream recipient shall automatically receive a sub-licence on the Intellectual Property on the Interoperability Information and the Technical Specifications from the Licensee under the terms of the Selected Open Source Licence.

[SUB-OPTION 2: LICENCE EXPANDED TO ANY RECIPIENT OF THE FOSS LICENSED SOFTWARE LICENSEE PRODUCT OR DERIVATIVE THEREOF].

Upon such notification:

- the Licensor automatically grants to the Licensee, on a worldwide and non-exclusive basis, any complementary licence on the Licensor's Intellectual Property on the Interoperability Information and the Technical Specifications without which the Licensee could not license his software Licensee Product without breaching the terms and conditions of the Selected Open Source Licence(s); and

- the Licensor automatically grants to any recipient that receives under the Selected Open Source Licence(s) a copy of the software Licensee Product (or any other product that includes all or parts of the software Licensee Product that implement or include Interoperability Information) a licence subject to the same terms and conditions of this Licence, except (if applicable) that such licence will always and in any case be royalty free.

In case of any conflict between Article 4bis and any other provision of this Agreement, the terms of this Article 4bis shall prevail.

business model and on the Intellectual Property on the Interoperability Information.

By allowing the implementation in open source software, the Licensor allows such software to be disseminated under royalty free conditions and according to the Free Software Definition or the Open Source Definition.

By allowing the use of any OSI-certified open source licence (option 1), situations could occur where software implementing the Interoperability Information could be licensed under non-copyleft or "weak copyleft" licences and therefore be eventually reused in "proprietary" software. One could therefore understand that the Licensor prefers to only allow the use of selected licences (option 2) – most probably strong copyleft licences such as GNU GPLv2, GPLv3 or AGPLv3.

As regards SUB-OPTION 1: This version of article 4bis has been drafted in a way that the Licensee receives only the rights that are strictly necessary to comply with the licensor's obligations under the Selected Open Source Licence(s). These obligations differ greatly from one licence to another, particularly as regards patents.

The Licensor and the Licensee must therefore carefully analyse the effects of the Selected Open Source Licence on the IP rights and their possible automatic (sub)licensing to downstream recipients.

For instance:

- The EUPLv1.1 only provides that the Licensor grants a licence on the patents that it holds. If the Licensor is a licensee under an INTILA licence that applies to some patents, the Licensor is not the holder of such patents and has therefore no obligation to grant (sub)licence rights to its licensees under the EUPLv1.1. The result is that the licensees under the EUPLv1.1 do only receive a copyright license from the licensor, but not use rights on the patented features of the code, which implies that they have to also get a separate licence on such patents.
- The Apache licence version 2.0, will not protect downstream users either against Patent Infringement Claims from the Licensor since the Grant of Patent Licence

	(Article 3 of ASL) is limited to "patent claims licensable" by the contributor: it is therefore not a strict obligation to grant (sub)licenses on patents that one does not own and on which one benefits only from a non-transferable and non-sub-licensable licence. • On the contrary, GNU GPL version 3 protects downstream acquirers as its Article 10 ("Automatic Licensing of Downstream Recipients") & 11 ("Patents") expressly require to extend "the patent license to downstream recipients". "Automatic licensing of downstream recipients" is a mechanism that is provided in some open source licences (art. 6 of the GPLv2 or article 10 of the GPLv3 for instance). As regards SUB-OPTION 2: This option is much more open and permissive, including towards downstream recipients, as it grants the latters with a Licence on the Interoperability Information even if the Selected Open Source Licence does not impose or provide for such expansion. This automatic downstream licensing will most likely be workable on a royalty free basis only.
Article 4ter [Optional] – Licensee Products Liability	
The Licensee assumes responsibility for, and hereby agrees that the Licensee Products will [Select and/or complete] [_] comply with the Interoperability Information as stated in the Technical Specification, [_] meet the highest levels of quality and integrity for similar products, [_] not be unlawful, [_] be Developed and Exploited in compliance with any safety laws, regulations and agency approvals or prior authorization as applicable, [_] [other] Licensee will indemnify, defend and hold Licensor harmless from any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorney and counsellors fees) arising out of or in relation with Licensee's Development and Exploitation of Licensee Products [this indemnification clause could be restricted by adding] directly linked to a faulty implementation of the Interoperability Information stated in the technical Specification.	The Licensor might want to ensure that it will not be liable for the Exploitation of the Licensee Products. Interoperability Information licences sometimes encompass Licensee Product liability clauses (this article is an example of such clause). However, parties should consider addressing product liability as well as any other aspect of the production, distribution and exploitation of the Licensee products in a separated agreement.
Article 5 – Disclaimer of warranty	
The Licensor licenses the Interoperability Information on an "as is" basis and without warranties of any kind, express or implied, including without limitation the implied warranties	This disclaimer is an essential part of the Licence and a condition for the grant of any rights to the Information Interoperability.

of merchantability, fitness for a particular purpose, absence of defects or errors, accuracy. However, and as a specific exception to the previous paragraph, the Licensor declares that, to the best of its knowledge, the Intellectual Property is owned by the Licensor or licensed to the Licensor and that it has the power and authority to grant the Licence. Neither the Licensee, nor its employees, agents, or distributors have any right to make any representation, warranty or promise with respect to the Interoperability Information. This disclaimer of warranty is an essential part of the Licence and a condition for the Licence Grant. This Licence does not entitle the Licensee to any support for the Interoperability Information, unless the Licensee makes separate arrangements with the Licensor and pays all fees associated with such support.	This clause has two principal functions: - to warrant that every Intellectual Property rights owned by the Licensor are effectively licensed under this licence; - to disclaim any other warranty in order to minimize the risks for the Licensor. Note that this clause could not have the same effects if the licence is granted for a fee.
Article 6 – Limitation of Liability	
Except in the cases of wilful misconduct, gross negligence or damages directly caused to natural persons, parties will in no event be liable for any direct or indirect, special, incidental or consequential, material or moral, damages of any kind, arising out of this Licence, of the use of the Interoperability Information or the Technical Specification or of the Development and the Exploitation of Licensee Product by the Licensee or any third party, whether under theory of contract, tort (including negligence), product liability or otherwise, including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data or any commercial damage, even if the Licensor has been advised of the possibility of such damage. Except in the cases of wilful misconduct, gross negligence or damages directly caused to natural persons, in no event will the parties aggregated liability under this Agreement exceed the highest amount of the followings: • (i) the amount of monies paid by Licensee to Licensor [this could be further limited by completing with] for the last complete quarter (3 months) in application of Article 4, or • (ii) 100 EUR.	This is a classical mutual limitation of liability clause. This limitation aims to minimize the risks for both parties Note that the clause should be adapted in case of warranties or representations from Licensee or Licensor. Furthermore, some liability might be mandatory if the licence is granted for a fee.
Article 7 – Relationship of the Parties	
Neither party may represent or bind the other party in any way and nothing stated in this Agreement will be construed as creating the relationships of joint venturers, partners, employer and employee, franchisor and franchisee, master and servant, or principal and agent.	Classical terms, useful to avoid requalification by the Court.
Article 8 - Term & Termination of the Licence	
The Licence Grant term is : [_] the whole duration of the Licensed Intellectual Property. OR [_] a period of _____ starting as of the Effective Date. At the end of the term, the Licence shall be tacitly renewed for a period of the same length, unless notice of the termination is given by one of the parties at least 6 months before the date of such termination.	As a term is requested from a legal point of view, the Licensor should precise if the INTILA is granted for the whole duration of the IP rights or for a shorter period.
The Licence Grant will terminate [ ] automatically upon any Licensee's breach of this Agreement; OR [_] if the Licensee fails to comply with any of the material terms or conditions of this Agreement and does not cure such failure within a period of 30 days upon reception of a written non-compliance notice from Licensor describing such failure.	Automatic termination upon breach (plus a cure opportunity) is common in software/IT licences. Many other cases of termination could be considered. The acquisition of the Licensee by a third party or a competitor of the Licensor for instance.
Article 9 - Miscellaneous	
The Licence represents the complete agreement between the Parties as to the Interoperability Information licensed hereunder. All rights and restrictions contained herein may be exercised and shall be applicable and	These are some boilerplate clauses.

binding only to the extent that they do not violate the applicable law and are intended to be limited to the extent necessary to render this Agreement legal, valid and enforceable. If any provision of the Licence is invalid or unenforceable under the applicable law, this will not affect the validity or enforceability of the Licence as a whole. Such provision will be construed and/or reformed so as necessary to make it valid and enforceable. This Agreement is personal to the Licensee and is not assignable in whole or in part by the Licensee without the prior written consent of the Licensor.	
10. Applicable law	
This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of [complete with jurisdiction] excluding conflict of law provisions.	This is a classical (but nonetheless important) clause. An applicable law clause can have a tremendous influence on the application, the interpretation and the effects of the licence. Parties should pay extra attention to the way the licence would be applied, interpreted and/or enforced under the applicable law.
11. Dispute Resolution	
[OPTION 1 : JURISDICTION] The parties submit all their disputes arising out of or in connection with this Agreement, which cannot be resolved by mutual agreement, to the exclusive jurisdiction of the Courts of [complete with jurisdiction]. [OPTION 2 : ARBITRATION] Any dispute arising between the parties in connection with the validity, the interpretation or the execution of this Agreement, which cannot be resolved by mutual agreement, [SUB-OPTION 2.1] - shall be finally settled expeditiously by arbitration conducted and completed within 120 days in accordance with the then-current commercial arbitration Rules of the International Chamber of Commerce, by a single arbitrator appointed in accordance with said Rules, provided that the arbitrator shall be chosen from a panel of arbitrators knowledgeable in business information and data processing systems. The place of arbitration shall be [complete with location] and the language of arbitration shall be [complete with language]. [SUB-OPTION 2.2] - shall be submitted to the arbitration of [complete with Arbitration Center's Name and possible options offered by such Center, such as the arbiters, the language, etc.].	The dispute resolution clause is also an important feature of any contract, which influences the way disputes are handled, the speed of the resolution procedure and the costs generated thereby. Given the complexity and the technicity of the matter, arbitration is an alternative to be seriously considered.
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ANNEX 1: Identification of the Interoperability Information	
	The licensed Interoperability Information should be identified in this annex. The main features could be briefly described and a reference to the Technical Specification could be made. Licensor should pay attention not to disclose any part that is protected by

	trade secrets, if applicable. These parts should be revealed only upon clear acceptance of the Licence by the Licensee. Consider identifying the format of the files (electronic, paper,...) and the mode of their communication (e-mail, download, media, to be sent by courier...).
ANNEX 2: Intellectual Property in the Interoperability Information	
The Licensor asserts owning (or having at least the right to sublicense as provided in the present Agreement) the following intellectual property rights to the Interoperability Information:	
(_) **trade secrets and confidential information** embodied in and specific to the Interoperability Information and disclosed by the Technical Specification;	If the Interoperability Information encompasses information that is protected by trade secrets, the Licensor should: - use the "confidentiality" option as provided under article 3bis - procure that the Licensee signs the Agreement before being provided with any secret features of the Interoperability Information or the corresponding Technical Specification.
(_) **copyrights** in the Interoperability Information and the Technical Specification; Copyright and Similar Rights means copyright and/or similar rights closely related to copyright including, without limitation, performance, broadcast, sound recording, and *Sui Generis* Database Rights, without regard to how the rights are labeled or categorized.	As copyright is acquired by operation of law, Licensor should in good faith assert its rights to some identified original works.
(_) **Patent** rights (from claims and applications) covering the Interoperability Information and that would be necessarily infringed by Developing and/or Exploiting Licensee Products, without including any patent claims (1) to any underlying or enabling technology that may be used or needed to make or use a system or product or portion thereof that implements the Interoperability Information or (2) to any implementation of other technical documentation, specifications or technologies that are merely referred to in the content of the Technical Specification. Without this list being exhaustive, the following Patents and Patent applications are included in the Intellectual Property in the Interoperability Information:	Patents are much more easily identifiable as each patent application or grant has a unique identification number that could be disclosed using the table below.

Jurisdiction	Patent N°	Title
_____ [complete the list]	_____	_____

Annex 3: Royalties Calculation and Payment Scheme	
Example: payment per Licensee Product unit or copy that is Distributed Identification requirements Licensee shall comply with the following identification requirements - Each individual Licensee Product unit or copy must be attributed a unique and	Reference is made to the Guidelines for Valuing Interoperablity Information (SMART 2013/0045)

permanent identification number (ID number), which cannot be modified by any Downstream Acquirer subsequent to the Distribution of the said unit or copy; and

- Licensee must provide Licensor with a [complete with a period of time : quarterly, semi-annual,...] report of the ID numbers of the Licensee Product units or copies that Licensee has Distributed within thirty (30) days after the end of each calendar [quarter, 6 months period]; and
- Licensee will not Distribute Licensee Product units or copies that are not attributed an ID number as provided in this section.

Lisensee shall pay to Licensor royalty fees at the rate of EUR [___] per Licensee Product unit or copy that has been distributed by Licensee.

Licensor will invoice Licensee for such fees upon reception of the report.

Amounts due under this Section are payable within 30 days after the date of the Licensor's invoice.

European Commission

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