



Licence Agreement

**("Agreement")**

concluded between

Description: City of Vienna 4C pos

the Magistrate of the City of Vienna

Magistratsabteilung 27 – Europäische Angelegenheiten

Schlesingerplatz 2

1082 Wien

phone. +43 (1) 40 00-27005, fax +43 (1) 40 00-7215

E-mail: post@ma27.gv.at

("City of Vienna")

and

**Ministry of Environmental Protection and Regional Development**

Peldu iela 25

Rīga, LV-1494

Latvia

("Licensee")

(individually referred to as "party", collectively as "parties")

**Preamble**

On the basis of Article 125 (2) lit d of the (EU) Regulation No 1303/2013 of the European Parliament and Council of 17 June 2013, all European territorial cooperation ("ETC") programmes shall be obliged to establish a system that facilitates electronic recording and saving of information about the programme. The aim of the ETC programmes is to achieve territorial promotion and cooperation and they are being implemented in two or more EU Member States or third states (e.g. candidate countries) respectively.

Furthermore, according to Article 122 (3) of the (EU) Regulation No 1303/2013, the entire exchange of information between the beneficiaries, the administrative authority, the certifying authority, the verifying authority and the intermediate bodies shall occur via electronic data interchange systems from 31 December 2015 the latest.

The objective of the INTERACT 2007-2013 programme is to support all ETC programme authorities in fulfilling their tasks. For this purpose the beneficiaries of the INTERACT programmes create, amongst other things, tools such as templates, data bases, softwares etc., in collaboration with the respective programme authorities and make these available free of charge. On the basis of a decision made by the Monitoring Committee of the programme, the city of Vienna as beneficiary of the INTERACT 2007-2013 programme for the project INTERACT Point Vienna of PL.O.T EDV Planungs- und HandelsgesmbH ("PL.O.T") has commissioned the development of a computer-aided system for programme management and monitoring. The system is being elaborated in close cooperation with ETC programmes, it is based on their needs and they can use it free of charge. The system is being developed and delivered in several phases (milestones).

The city of Vienna is prepared and shall be entitled to sub-license the system according to the rights the city granted itself. Thereby the city of Vienna provides the licensee with the software in its respective condition free of charge, but at their own risk and at their own expense.

On this basis the parties agree therefore as follows:

**Subject Matter**

* 1. The subject matter of this agreement is sub-granting the rights of use of the "*eMonitoring-systems for ETC programmes" and of the corresponding source-code (together "e-MS") which was developed by PL.O.T. on behalf of the city of Vienna.* The city of Vienna shall provide the licensee with the e-MS as available at the time, without entitlement to a specific form on the part of the licensee.
  2. The licensee acknowledges that the software is based on a non-binding interpretation of the legal provisions at the time of its commissioning, in particular, of the (EU) Regulation No 1303/2013 of the European Parliament and Council dated 17 December 2013 and of the (EU) Regulation No 1299/2013 of the European Parliament and Council dated 17 December 2013 as well as of the other applicable EU regulations regarding European structure- and investment funds, through the INTERACT Point Vienna and the ETC programmes which are involved in the development process: Central Europe, Central Baltic, Austria-Hungary und North West Europe. As administrative authority and administrator of ETC programmes the licensee is aware that there is no uniform understanding underlying the comprehensive and decentralised layout of the regulations regarding European Structural and Investment funds. Furthermore the licensee is aware of the fact that the interpretation and understanding of the regulations might be subjected to changes in the future due to changes in legislation, jurisdiction, administrative practices or the legal understanding of the European Commission.
  3. e-MS is still in the developmental stage. For this reason there has been no final acceptance on the part of the city of Vienna so far. The date 31st of December 2015 is being envisaged as a tentative date of completion of e-MS. The actual date of completion can vary. The city of Vienna also reserves the right to cancel the completion of the e-MS at any time. Also after completion of the e-MS the city of Vienna reserves the right to further develop and modify the programme at its discretion.
  4. Therefore the licensee will be provided with the e-MS in its existing form "*as is"* at the time of the respective conclusion of the agreement. It shall be the responsibility of the licensee to thoroughly examine the interpretation of the legal framework as well as the functioning capacity and suitability of the e-MS and safety provisions underlying the e-MS and the software updates before implementing und using the software for the administration of support programmes. On this basis independent and responsible decisions regarding the implementation of the software can be taken. The licensee is also aware of the fact that programme errors, safety gaps and other bugs may occur frequently, particularly until completion of the final first version. The city of Vienna shall assume no liability, warranty or guarantee for the e-MS. This also applies to the transfer of the e-MS that is free of charge. In particular, the city of Vienna shall not be held responsible for a specific composition of the software, its suitability for the administration of support programmes or the correctness of the interpretation of the legal conditions.
  5. Sub-licensing to the licensee is free of charge.

1. **Scope of Sub-License**
   1. The license terms between the city of Vienna and PL.O.T in attachment ./A constitute an integral part of this contract. The granting of rights to the licensee will take place according to the scope of contractual rights granted by PL.O.T to the city of Vienna
   2. The licensee will be provided with the software in its existing form "*as is"*.
   3. The use of e-MS shall be limited to the purpose of computer-aided programme management and monitoring system for the administration of European structure- and investment funds and in compliance with the legal requirements. In particular the use for deviating purposes, such as own economic purposes, are explicitly prohibited.
   4. The licensee shall not be entitled to grant sub-licenses or to transfer rights of use of the e-MS. Neither shall the licensee have the right to publish the e-MS as a whole, as software, source-code or as a part of it nor to pass information on to third parties. Any of the aforementioned actions are only permitted if conducted as part of authorised editing of the e-MS on behalf of the licensee. When authorising third parties with the editing of the e-MS, the licensee expressly undertakes to take any measures that are necessary to avoid further transfer of the software as well as its use for deviating or own economic purposes.
   5. The components listed in attachment ./B of the e-MS are based on an open-source-license. The city of Vienna shall inform the licensee accordingly should additional components be required as a consequence of updates or further developments. The respective open-source-license terms have to be observed regarding the use, editing or any other form of utilization. The scope of the contractually granted rights for these components shall be limited with the scope of the relevant open-source-license. The licensee shall hold the city of Vienna harmless without recourse and compensation in the event of any breaches of the open-source-terms.
2. **Further development of e-Ms**
   1. The city of Vienna reserves the right to develop the e-MS at its own discretion after conclusion of this agreement. The city of Vienna can make possible further developments like adjustments, bug-fixes etc. available to the licensee at its discretion. The rights shall be governed by this agreement unless the city of Vienna provides other regulations unilaterally. The licensee is not eligible for such updates or maintenance of the e-MS or bugfixes. Specifically there is no entitlement for the licensee to obtain remedy for possible programme errors, safety gaps or other bugs. The licensee acknowledges that the updates and further developments are solely based on the interpretation of the applicable terms by the INTERACT Point Vienna and the ETC programmes Central Europe, Central Baltic, Austria-Hungary and North West Europe which are participating in the development process. Furthermore, the licensee acknowledges that the updates and further developments are exclusively based on the system as last operated by the city of Vienna. The updates and further developments shall also be made available "*as is".* For this reason the licensee shall check any updates or further developments before upload and ensure that they are compatible with the existing programming and the system environment. Specifically he shall generate data backup before upload. The upload and utilization of updates and further developments therefore takes place at the licensee's own list and without liability on the part of the city of Vienna.
   2. To the extent permitted by the right to use and edit, the licensee is entitled to adapt the software through authorised third parties according to his specific requirements, to remove possible errors and to develop the software further and to service it. Any processing or editing shall take place at the risk and expense of the licensee.
   3. The licensee shall have the obligation to make available any improvements, processing or other updates of the e-MS (by the licensee or through authorised third parties) to the city of Vienna in source-code- and machine-readable form and with unlimited user right for own purposes as well as sublicensing right. The licensee grants the city of Vienna the irrevocable right to use such updates, processing or other improvements according to all currently known or future types of exploitation temporally, factually and spatially without limitation, in particular, to copy, distribute, to transfer and to send wired or wireless, to record and to make available and to transfer all rights to third parties who are entitled to use them to the same extent. Furthermore, the city of Vienna is entitled to process such improvements, processing or other updates by itself or through third parties, such as PL.OT, to integrate it in the e-MS and to utilize it in the same scope or to pass it on to third parties.
   4. The licensee acknowledges that compatibility with possible updates or other service-, change or other development measures can get lost when carrying out processings or adjustments or other development measures. If the licensee nevertheless uploads programs that were made available by the city of Vienna, malfunctions, loss of data or user settings may occur.
3. **Obligations of the licensee**
   1. The development of e-MS took place on the basis of the own interpretation and the understanding of the legal situation by the city of Vienna at the time of completion. The licensee is therefore obliged to check the e-MS under the in point 1.4 of these agreement listed criteria. Should hence arise any concern regarding the suitability of the e-MS for the purposes of the licensee, the licensee can adjust the software himself as part of his right to edit or authorise third parties to do so. No further-reaching claims exist.
   2. The city of Vienna points out that the programme was developed by PL.O.T EDV Planungs- und HandelsgesmbH, Franz-Josefs-Kai 33, 1010 Wien, Austria. The corresponding copy right name has to be preserved in any case, whether the e-MS was implemented and is used with or without editing bt third parties.
   3. In order to facilitate an improvement of e-MS according to point 3.1, the licensee shall re-send any proposals for changes or improvements as well as error messages and safety gaps to [*ip.vienna@interact-eu.net*]. The licensee shall not be entitled to the practical realization of such proposals.
4. **Duration and Termination**
   1. The granting of rights shall take place without restriction regarding time.
   2. The right to termination for good cause remains unaffected by this. Such a good cause is said to occur when the licensee sub-licenses the software without authorization or desviant from point 2.3 for his own economic purposes.
5. **Liability of the city of Vienna**

In accordance with the granting of rights at no charge and the under point 1.2 described circumstances the city of Vienna does not assume any liability, guarantee or warranty for the functionality and suitability of the e-MS for a particular purpose or any damage resulting from misfunctions. Particularly any liability and warranty for system errors and bugs, incorrect calculations through the e-MS as well as wrong or later outdated implementation of the relevant legal conditions is ruled out. To this effect the city of Vienna refers to the obligation of the licensee to check beforehand as well as right to edit and to remove any possible damage.

1. **Concluding provisions**
   1. Any changes and amendments to this Agreement must be rendered in writing to attain validity. This shall likewise apply to any waiver of such form of requirement. Oral agreements considering this agreement do not exist. The written form shall also be preserved in explanations in the fom of fax ot email.
   2. The city of Vienna is entitled to cite licensees for reference purposes to third parties.
   3. The licensee is not entitled to transfer his rights and obligations of this agreement to a third party unless he has received the explicit permission of the city of Vienna.
   4. Should a provision of this agreement become ineffective or unfeasible, then this does not affect the effectiveness of the legal regulations.   
         
         
      The parties try to replace the unvalid provision by a valid one corresponding as closely as possible to the commercial purpose of the contract.
   5. The agreement shall be exclusively subject to Austrian material law, under exclusion of the referral laws and UN commercial law. The place of jurisdiction for all disputes, including the question for its coming into existence legally valid, is exclusively the local and competent court in 1010 Vienna.
   6. The valid conclusion of the license agreement requires that the licensee received these terms and a download of e-MS directly from the city of Vienna and the licensee either (i) returned a signed license agreement or (ii) the use of e-MS is purely factual.

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| |  | | --- | | **[*Signature*]** | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature | |  | | Name(s) (in plain text)  **Sandis Cakuls**  **Deputy State Secretary** | | | Place, date: **Riga/…/…/…** | | | Name of institution:  **Ministry of Environmental Protection and Regional Development**  Name of the respective ETC programme:  **Objective 3 of European Union Structural Funds “European Territorial Cooperation” Latvia-Lithuania Cross Border cooperation Programme 2007-2013** | | | |  | | --- | | **[*Signature*]** | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature | |  | | Name(s) (in plain text)  **Senate Councillor Martin Pospischill**  **Head of Service** | | | Place, date: **Vienna/…/…/…** | | | Name of institution  **MA 27 – European Affairs** | | |

Attachments A: License Terms

B: Open-Source-Components

**Attachment A**

**License Terms**

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| **5.3 Intellectual Property Rights**  39. The client needs various intellectual property rights at the implemented solution.  40. With the component or final acceptance of the system (or his module respectively) the intellectual property rights for the software which is the subject matter of this agreement will be granted for a limited period of time.  43 Furthermore the client needs the right to edit for all system components so that he can develop the system further if required. For this reason all system components (also) have to be handed over to the client as free source. The client needs to be provided with a completely documented source code and the documentation has to be in English.  44 Free from this requirement for the right to edit and the delivery of the surfaces are only those system components that are implemented by means of commercial standard-software which is not under the influence of the client  **12.2 Adjustments of the system carried out by client**  173 The client reserves the right to make adjustments and adjustments to the system.  174 In any case the client must be granted the right to modify the so-called configuration settings, i.e. parameters and definitions or to connect systems to the defined interfaces without this affecting the obligations of the client to service the software.  **14.3** **Applicable Law**  221 All disputes and differences of opinion in relation to this contract including all disputes regarding the effective conclusion of the agreement will be resolved exclusively under Austrian law and under exclusion of references to foreign law. The UN sales connection does not apply.  **14.5** **Place of Jurisdiction**  223 The exclusive venue for legal disputes from or in connection with the present contract is the competent court in Vienna. |

**Attachment B**

**Open-Source-Components**

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| **Module** | **License** |
| junit | Eclipse |
| mysql | GPL |
| hibernate | LGPL |
| spring | Apache |
| aspectj | Eclipse |
| java-object-diff | Apache 2.0 |
| log4j | Apache |
| commons-configurations | Apache 2.0 |
| javax-faces | CDDL |
| maven | Apache 2.0 |
| jstl | CDDL |
| primefaces | Apache 2.0 |
| primefaces extensions | Apache 2.0 |
| ckeditor | LGPL |
| commons | Apache 2.0 |
| mondrian | Eclipse |
| flying-saucer | LGPL |
| velocity | Apache 2.0 |
| quartz | Apache 2.0 |
| active-mq | Apache 2.0 |
| sksamuel/diffpatch | Apache 2.0 |