

Licensing Agreement

concluded between the



Department for European Affairs

Friedrich-Schmidt-Platz 3

1080 Vienna, Austria

phone. +43 (1) 40 00-27005, fax +43 (1) 40 00-9927027

E-mail: post@ma27.wien.gv.at

(hereafter "**City of Vienna**")

and



(hereafter "**Licensee**"), collectively also the "**Parties**".

1. Preamble

According to Art 63 (7) of the Regulation (EU) No 2018/0196(COD) and its succeeding versions all exchanges of information between the beneficiaries and the programme authorities must be carried out by means of electronic data exchange systems.

The Interact Programme, like the predecessor programmes, has the objective to support all ETC programme authorities in fulfilling their task as laid out by above-mentioned regulation. To this purpose, Interact beneficiaries together with the concerned programme authorities produce tools such as templates, databases, software etc. and provide these free of charge. Based on a decision of the programme monitoring committee, therefore, City of Vienna, as beneficiary of the

Interact programme 2014-2020, as well as of the successive programme 2021-2027, for the project Interact Office Vienna, commissioned the development of a computer-assisted programme management and monitoring system (hereafter also "**Software**") to a subcontractor or third party provider. This system has been created in cooperation with ETC programmes and based on their needs and for their own use. It will be developed and delivered in several steps (releases).

The City of Vienna provides the Licensee with the Software as is, in the current state, free of charge, but at its own risk and expenses. The Parties agree and acknowledge that City of Vienna owns all right, title and interest in and to the licensed products listed below.

On this basis, the parties therefore agree as follows:

2. Content of the agreement

2.1. The agreement relates to the granting of a sub-authorization to use the software "Joint electronic Monitoring System", as well as the corresponding source code (collectively hereafter, "**Software**" or "**Jems**"). The City of Vienna provides Licensee with the Jems, as it is available at the time of the Agreement, without any right to a certain form.

2.2. Licensee acknowledges that the Software is based on a non-binding interpretation of the legal framework, in particular, Regulation (EU) No 2018/0196 (COD) of the European Parliament and of the Council of 29 May 2018, as well as other applicable EU regulations relating to the European Structural and Investment funds, as interpreted by Interact Office Vienna at the time of the release of the Software. Licensee, as the Managing Authority and administrator of ETC programmes, acknowledges that the comprehensive regulations relating to the European Structural and Investment Funds are locally interpreted and are not based on one single understanding. Likewise, the Licensee is aware that the interpretation and understanding of the regulations may change in the future due to changes in legislation, case law, administrative practise or the legal understanding of the

European Commission. The Licensee also acknowledges that the respective regulations are subject to change as well.

2.3. Jems is an evolving product. The City of Vienna also reserves the right to discontinue the development of Jems at any time. Even after the completion, the City of Vienna reserves the right, at its sole discretion, to further develop the Software and change it.

2.4. Jems is therefore provided to the Licensee "as is" at the time of delivery ("release"). Licensee shall immediately examine the Jems underlying interpretations of the legal framework, and also its technical suitability and functionality as well as the security precautions, before deployment and use for managing programmes, and on this basis independently decide about the use of the Software.

2.5. Unless otherwise defined, the special terms used in this Agreement shall have the same meaning as laid out by Regulation (EU) No 2018/0196(COD) and its succeeding versions.

3. License Grants

3.1. Subject to the terms and conditions laid out in this Agreement, City of Vienna hereby grants to Licensee a non-exclusive, worldwide license (without the right to sublicense) to use, display, perform, distribute internally or externally, alter, improve and develop the Software. Alterations and developing may be outsourced to third parties under the license granted hereunder.

Within the limitations of this Agreement the license is irrevocable.

3.2. Licensee acknowledges that part of the Software is based on open-source licenses and/or third party licenses as laid out in Annex A. The scope of the license granted hereunder is subject to the limitations of the open-source licenses as well as the licenses of third parties listed in Annex A.

3.3. Notwithstanding anything in this Section 3 to the contrary, City of Vienna retains the right, for itself and third parties, to use, execute, reproduce, modify, display, perform, transmit, distribute internally and externally, and create derivative works of the Software. In connection with the foregoing, City of Vienna will deliver the Software following the execution of this Agreement by Licensee.

3.4. The Software may be used only in accordance with the purposes laid out in section 1 and for non-profit or non-commercial use.

4. Obligations of Licensee

4.1. Licensee agrees to submit to the respective terms and conditions of the used open-source and third party products (Annex A) and will hold City of Vienna harmless against any and all damages arising out of a violation of these open-source and third party products terms and conditions. City of Vienna retains the right to change the products listed in Annex A as the Software evolves and will provide an updated Annex A to Licensee together with the release of the respective Software version or update.

4.2. Licensee may, as stipulated in section 3, make changes to the Software and improve it. In this case, Licensee is, upon request, obliged to make the altered version available to City of Vienna for analysis, use and distribution. Licensee shall be responsible for acquiring the necessary legal rights and title and grant City of Vienna the irrevocable, geographically unlimited but not exclusive right and license to use, display, perform, distribute internally or externally, alter, improve and develop this version of the Software.

4.3. Licensee agrees to partake in a help desk system to be implemented by the City of Vienna. Notifications by any Party shall be made through this System and will be visible for all other participants. Licensee agrees to receive notifications and information via this help desk system and shall check on a regular basis for notifications.

4.4. Licensee is obliged to verify Jems against compliance with all necessary legal frameworks, in particular the points laid out in section 2.2. If this results in concerns about the functionality of Jems for Licensee, Licensee may adapt the Software at its discretion. Section 4.2. shall be observed in this context.

4.5. The Licensee is not entitled to use the Software as follows:

- Any use that is prohibited by law, regulation or governmental order or regulation in any relevant jurisdiction.
- To violate the rights of others.
- For unauthorized access to or unauthorized interference with services, devices, data, accounts or networks.
- To distribute spam or malware.
- In a manner that could damage its Software or interfere with their use by others.
- In an application or situation where an error in the Software contents could result in death or serious injury to body or health or serious damage to property or the environment.
- In any other manner not in accordance with the purpose of the Software (section 1 and 2).

5. Payment

5.1. The Software is provided free of charge.

5.2. All updates or new software releases, maintenance work (as defined below) and software revisions are provided free of charge.

6. Updates and Maintenance

6.1. Update or Software Release shall for all intents and purposes of this Agreement be defined as any new version of the Software.

6.2. Maintenance Work shall for all intents and purposes of this Agreement be defined as maintaining and changing the functionality and usability of the

Software and its source code such as bug fixes. Maintenance Work does not include local maintenance, especially hardware maintenance, user support and other services which concern Licensee's infrastructure.

- 6.3.** City of Vienna shall, at its own discretion, update the Software and release new versions.
- 6.4.** City of Vienna may, also at its own discretion, maintain any version of the Software.
- 6.5.** City of Vienna will aim to provide updates, new Software releases or maintenance service but is under no obligation to provide these services to Licensee under this Agreement.
- 6.6.** City of Vienna may choose for which version of the Software it will provide further maintenance services, if any, and shall inform Licensee thereof in due time.
- 6.7.** Notwithstanding any of the above, City of Vienna reserves the right to make changes to the Software at any time.
- 6.8.** Licensee acknowledges that City of Vienna can only provide any of the above-mentioned services to Licensee, if Licensee has not made (substantial) changes to the Software.
- 6.9.** Notwithstanding section 6.2. City of Vienna will aim to provide at its own discretion user support for the Software.
- 6.10.** Licensee shall have no claim to any of the above-mentioned services. City of Vienna will provide these voluntarily and on its own accord.

7. Defense of the licensed products

- 7.1. City of Vienna is not obliged to defend the hereunder licensed products or to take measure to uphold the protection of the licensed products.
- 7.2. City of Vienna may choose to authorize Licensee with the defense of the licensed products at its own discretion.
- 7.3. Licensee will promptly inform City of Vienna of any violation or infraction regarding the licensed copyrights of which it receives knowledge. Licensee will provide City of Vienna with all necessary assistance in the defense of the licensed products.
- 7.4. Licensee shall not seek legal or other remedy in connection with the defense of the Software without City of Vienna's prior approval.

8. Warranties and Representations

- 8.1. Nothing contained herein shall be deemed to be a warranty by City of Vienna that the rights granted hereunder, including any and all copyrights, will afford adequate or commercially worthwhile protection.
- 8.2. City of Vienna does not warrant for the Software's compliance with any set of laws. In particular, with the European General Data Protection Regulation and Regulation (EU) No 2018/0196 (COD) and its succeeding versions. Licensee acknowledges that it is its own responsibility to verify compliance and make adjustments at its own discretion.
- 8.3. City of Vienna makes no warranties whatsoever as to the commercial or scientific value of the hereunder granted copyrights. The licensed products are provided "as-is". City of Vienna makes no representation that the licensed products will not infringe the intellectual property or proprietary rights of any third party or violate the terms and conditions or terms of use of any third party.
- 8.4. City of Vienna shall have no obligation hereunder to provide any support or maintenance for the licensed Software to Licensee (see section 6). City of

Vienna is also not obliged to provide maintenance or correction of any reported bug concerning the Software.

- 8.5.** City of Vienna does not warrant for the flawlessness, security, usefulness or any other characteristic of the Software or any of the Services mentioned under section 6.

9. Liability and Indemnification

- 9.1.** As the Software is licensed and provided free of charge, City of Vienna will not be liable to Licensee with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for (a) any indirect, incidental, consequential or punitive damages or lost profits or (b) cost of procurement of substitute goods, technology or services.
- 9.2.** Licensee shall indemnify, defend and hold harmless City of Vienna and its current and former directors, employees, and agents and their respective successors, heirs and assigns (collectively, the "Indemnitees") from and against any liability, cost, expense, damage, deficiency, loss or obligation of any kind or nature (including reasonable attorneys' fees and other costs and expenses of litigation), based upon, arising out of, or otherwise relating to any claim arising out of this Agreement, including any cause of action relating to product liability concerning any product or service made, used, sold or performed pursuant to any right or license granted under this Agreement, except to the extent that such liability is caused by the gross negligence or willful misconduct by an Indemnitee (collectively, "Claims"). Neither Licensee nor City of Vienna shall settle any Claim without the prior written consent of the other, which consent shall not be unreasonably withheld.
- 9.3.** Licensee may request assistance in setting up the Software. Such assistance may be provided by City of Vienna at its own discretion and will be free of charge. A third party provider may in this case be commissioned to provide the necessary assistance. The exclusion of liability in section 9.1. between the Parties shall apply to such assistance services as well.

10. Term of Agreement, Revocation of License

10.1. This Agreement shall come to term when ESIF 2021-2027 ends.

10.2. Termination of the Agreement as stipulated in section 10.1 shall not affect the validity of the license hereunder. Licensee acknowledges that the services listed in section 6 will in any case cease after termination of this Agreement.

10.3. City of Vienna is entitled to terminate this Agreement for the following reasons:

- in case of either party's insolvency;
- in case of any violation of this Agreement by Licensee (section 4 in particular);
- in case City of Vienna is not hosting Interact Office Vienna anymore or its activities are moved to a different country or entity.

10.4. Upon termination of this Agreement for cause as stipulated in section 10.3., the rights and licenses granted to Licensee under section 3 shall terminate, all rights to the Software will revert to City of Vienna and Licensee may not make any further use or exploitation of the Software.

10.5. Termination or expiration of this Agreement shall not relieve the Parties of obligations accruing prior to such termination or expiration.

11. Final Provisions

11.1. This Agreement is the sole agreement with respect to the subject matter hereof and except as expressly set forth herein, supersedes all other agreements and understandings between the parties with respect to the same.

11.2. This Agreement will be governed by, and construed in accordance with, the material laws of the Republic of Austria, without giving effect to any choice or conflict of law provision. Any action, suit or other proceeding arising under or relating to this Agreement shall be brought before the competent court for the office of the Vienna City Administration at the City Hall in the 1st district of

Vienna, Austria, and the Parties hereby consent to the sole jurisdiction this court.

- 11.3.** This Agreement may be amended, modified, superseded or cancelled, and any of the terms may be waived, only by a written instrument executed by each party or, in the case of waiver, by the party waiving compliance. The delay or failure of either party at any time or times to require performance of any provisions hereof shall in no manner affect the rights at a later time to enforce the same.
- 11.4.** Neither party will be responsible for delays resulting from causes beyond the reasonable control of such party, including fire, explosion, flood, war, strike, or riot, provided that the nonperforming party uses commercially reasonable efforts to avoid or remove such causes of nonperformance and continues performance under this Agreement with reasonable dispatch whenever such causes are removed.
- 11.5.** The City of Vienna is entitled to mention Licensee to third parties for reference purposes.
- 11.6.** This Agreement may not be assigned by either party without the consent of the other. Any assignment purported or attempted to be made in violation of the terms of this clause shall be null and void and of no legal effect.
- 11.7.** Licensee already at this point agrees that in case the City of Vienna stops hosting the Interact office Vienna , the respective competent authority may enter into this Agreement in place of the City of Vienna with all rights and obligations thereunder.
- 11.8.** This Agreement shall come into effect by signature of all parties and on the day of the last signature.

11.9. This Agreement may be translated into different languages. The Parties agree that this English version shall prevail in case of any conflict between different versions.

11.10. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected.

IN WITNESS WHEREOF, the Licensee has caused this Agreement to be executed by his duly authorized representatives as of the last date written below. The City of Vienna has already agreed to this Licensing Agreement.

[Place, Date), Licensee

Attachement A: The used open-source and third party products

Annex A

The used open-source and third party products

Back-End

Spring (Apache 2.0) - version 5.2.7
MariaDB (GPL v.2) - version 10.3.13
mariadb-java-client (LGPL 2.1) - version 2.4.4
MinIO (Apache 2.0) - version RELEASE.2020-05-16T01-33-21Z
org.apache.commons-io (Apache 2.0) - version 2.7
Flyway (Apache 2.0) - version 6.4.4
jackson-module-kotlin (Apache 2.0) - version 2.11.0
swagger (Apache 2.0) - version 2.9.2
h2database (MPL 2.0) - version 1.4.200
ElasticSearch (Apache 2.0 for most of parts) - version 7.9.2
doyaaaaaaken/kotlin-csv (Apache 2.0) - version 0.15.0

Front-End

Angular (MIT) - now version 9.1.11 includes material design now version 9.2.4
bootstrap (MIT) - version 4.5.0
moment (MIT) - version 2.27.0
RxJS (Apache 2.0) version 6.5.5
FontAwesome Free (SIL OFL) (The icon font in the project)
Roboto (Apache 2.0) (The copy font in the project)

Productivity

It is possible that some Cloudflight proprietary code can be found in the code repository. This code aims for productivity/efficiency of the development process such as deployment or testing, they are not directly part of the Monitoring System application code.

1. cloudflight-gradle-plugin 5.13.10 (license* below)
2. io.cloudflight.platform 1.3.2 (license* below)

*Cloudflight license

This license gives simple, non-exclusive, perpetual rights of use, modify and distribute the code for the specific purpose as computer-assisted programme management and monitoring system for the management of European Structural and Investment Funds and for compliance with the relevant legal requirements. As such it covers all exchanges of information between the beneficiaries and the managing authority, certifying authority, audit authority and intermediate bodies, that must be carried out via electronic data interchange systems (see Article 125 par. 2 letter d of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17.12.2013 and Art. 122 par. 3 of the Regulation (EU) No 1303/2013). In particular, the use, modification or distribution for purposes deviating therefrom, as well as for own economic purposes, is explicitly prohibited.