

LICENCE AGREEMENT

This agreement is signed on _____ of _____ 202_,

BY AND BETWEEN

The European Anti-Cybercrime Technology Development Association, a non-profit organisation registered at Registro General de Asociaciones del País Vasco¹ (registration number AS/G/23156/2020), represented by Juan Arraiza Irujo, Business Manager, hereinafter referred to as EACTDA or the "**Licensor**", having its principal place of business at Paseo Mikeletegi 71 - Planta 3 - local A.1.2, 20009, Donostia/San Sebastian (Gipuzkoa), Spain;

AND

[*** NAME OF INSTITUTION***], a [*** TYPE OF ORGANISATION (E.G., LAWENFORCEMENT ***)], represented by [*** NAME OF THE LEGAL REPRESENTATIVE ***], [*** POSITION OF THE LEGAL REPRESENTATIVE ***], referred to as [*** ACRONYM ***] or the "**Licensee**", having its principal place of business at [*** ADDRESS ***].

RECITALS

- I. Whereas EACTDA is a non-profit organization the purpose of which is to develop and provide technological solutions to European Law Enforcement Agencies and Forensic Laboratories, for their use in the fight against cybercrime.
- II. Whereas [*Institutions's acronym] is a EU public entity/a law enforcement agency from [*EU country], one of its purposes being the fight against cybercrime.
- III. Whereas EACTDA has developed a software solution which might be of help to [*Institutions's acronym] within the framework of the fight against cybercrime.
- IV. Whereas [*Institutions's acronym] is interested in receiving a license in respect with said software solution

The Parties therefore agree to enter into this license agreement (the "**Agreement**"), governed by the following

¹ <https://www.euskadi.eus/registro-asociaciones-pais-vasco/web01-tramite/es/>

CLAUSES

1. Definitions

1.1 In this Agreement:

"Agreement" means this document including any Schedules and any amendments made to it;

"Business Day" means any weekday other than a public holiday in the Basque Country (Spain)²;

"Business Hours" means the hours of 09:00 to 17:00 CET/CEST on a Business Day;

"Documentation" means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the Licensee;

"Effective Date" means the date of execution of this Agreement, which is the date on which the last of the Parties to sign the agreement does so.

"Intellectual Property Rights" means all intellectual property rights anywhere, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights, including copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

"Schedule" means any schedule attached to the main body of this Agreement;

"Software" means the software identified in Part 1 of Schedule 1 (Software Licence Particulars) including object code and source code formats;

"Software Defect" means a defect, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Licensee or any person authorised by the Licensee to use the Software;
- (b) any use of the Software contrary to the Documentation by the Licensee or any person authorised by the Licensee to use the Software;

² <https://www.euskadi.eus/gobierno-vasco/-/calendario-laboral/>

- (c) a failure of the Licensee to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"Software Specification" means the specification for the Software set out in Part 1 of Schedule 1 (Software Licence Particulars) and in the Documentation, as it may be varied by the written agreement of the parties from time to time; and

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2.

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force indefinitely, subject to early termination in accordance with Clause 11 or any other provision of this Agreement.

3. Territory

- 3.1 The license granted under this Agreement is valid worldwide.

4. Supply of Software

- 4.1 The Licensor shall make the Software available for download by the Licensee, and shall provide to the Licensee such assistance in relation to the download of the Software as the Licensee may reasonably request.

5. Licence

- 5.1 The Licensor hereby grants to the Licensee a worldwide, non-exclusive, royalty-free licence over the Software, which includes the following rights:
 - (i) right of reproduction;
 - (ii) right of distribution;
 - (iii) right of communication to the public; and
 - (iv) right of transformation (i.e. right to create derivative works of the Software)
- 5.2 The following particular uses are particularly permitted under the licensed rights

- (a) install the Software in its devices;
 - (b) use the Software for non-commercial purposes;
 - (c) create, store and maintain the Software; and
 - (d) fix, patch, improve, integrate, update and upgrade the Software, and create new versions of the Software,
- subject to the limitations and prohibitions set out and referred to in this Clause 5.

- 5.3 The Licensee shall not be entitled to grant sub-licenses of the Software to any third party.
- 5.4 The Software may be used for the sole purpose of performing activities related to the fight against cybercrime, and it shall only be used by the officers and employees of the Licensee.
- 5.5 The Licensee shall request and obtain written permission from the Licensor prior to giving access to the Software to the officers and employees of the Licensee's agents and subcontractors. The agreements reached and/or signed with contractors shall expressly include the restrictions and limitations contained in this Agreement for the licensee.
- 5.6 The Licensee must not carry out any act of commercial exploitation in respect with the Software; in particular, it shall not sell, resell, rent, lease, or loan the Software to any third party.
- 5.7 The Licensee shall be responsible for the security of copies of the Software supplied by the Licensor under this Agreement (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this Agreement.
- 5.8 The Licensee shall in the future grant the Licensor a license in respect with any derivative works performed over the Software (e.g. derivative software). The conditions of such a license shall be substantially similar to those in this Agreement: non-exclusive, worldwide validity, and royalty free and free of any other costs.

6. Ownership of Intellectual Property Rights

- 6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the Licensee, or from the Licensee to the Licensor. In particular, title to and ownership of the Software, including all Intellectual Property Rights therein, are and shall at all times remain the exclusive property of the Licensor.
- 6.1 The Intellectual Property Rights to derivative works, improvements or amendments to the Software or its object or source code, made by the Licensee, shall belong to the Licensee. However, the Licensee shall not make any commercial use of the modified software and shall be only entitled to use it for the purpose of fighting cybercrime.
- 6.2 The Licensee shall grant a non-exclusive, non-revocable, world-wide and royalty-free (and free of any other cost) license to any derivative works, improvements or

amendments to Software or its object or source code to the Licensor, with a right to sublicense it under the same or analogous terms to this licence.

7. Price

- 7.1 The license granted by the Licensor to the Licensee under this Agreement is royalty-free and free of any other cost.

8. Warranties

- 8.1 Each Party represents and warrants to the other Party that it is duly organized, validly existing, and in good standing as a corporation, an association or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering.
- 8.2 Each Party represents and warrants to the other Party that it has, and throughout the Term of this Agreement shall retain, the full right, power, and authority to enter into his Agreement and to perform its obligations.
- 8.3 Each Party represents and warrants to the other Party that when executed and delivered by such Party, this Agreement shall constitute the legal, valid, and binding obligation of that Party, enforceable against that Party in accordance with its terms.
- 8.4 Each Party represents and warrants to the other Party that its employees shall be obliged to maintain the confidentiality of the Confidential Information and to use it only in accordance with the provisions of this Agreement, and each Party shall use all reasonable endeavors and Confidential Information protection measures to avoid and act against non-compliance by its employees.
- 8.5 The Licensor represents and warrants that the Software will conform to the applicable Documentation and will work on the machines and with the operating systems, and other platforms for which they have been designed, as set forth in the Documentation.
- 8.6 The Licensor represents and warrants that the Documentation provided to the Licensee under this Agreement shall be, to the best of its knowledge, complete and correct.
- 8.7 The Licensor represents and warrants that it has not granted nor will in the future grant any rights to any third party which conflict with the rights herein granted to the Licensee during the Term.
- 8.8 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

9. Acknowledgements and warranty limitations

- 9.1 Despite the efforts made by the Licensor to provide the highest quality possible, the Licensee acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 9.2 Despite the efforts made by the Licensor to provide the highest security quality possible, the Licensee acknowledges that complex software might not be entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Licensor gives no warranty or representation that the Software will be entirely secure.
- 9.3 The Licensee acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.
- 9.4 The Licensee acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Software; and, except to the extent expressly provided otherwise in this Agreement, the Licensor does not warrant or represent that the Software or the use of the Software by the Licensee will not give rise to any legal liability on the part of the Licensee or any other person.

10. Limitations, exclusions of liability and indemnification

- 10.1 In no event shall either Party have any liability for any indirect, incidental, special or consequential damages, arising out of this agreement, including but not limited to loss of profits, anticipated savings, loss of revenues or incomes and loss of business opportunities or contracts, unless the Party has acted willfully.
- 10.2 Either Party hereby agrees to defend, indemnify, and hold harmless the other Party from any loss, liability, claim, or damage related to their breach of its obligations, representations or warranties under this Agreement.
- 10.3 Nothing in this Agreement will limit or exclude any liability for death or personal injury resulting from negligence, or for fraud or fraudulent misrepresentation.
- 10.4 Nothing in this Agreement will limit or exclude any liability when it is not permitted under applicable law.

11. Termination

- 11.1 The Licensee may terminate this Agreement by giving written notice to the Licensor 30 days before the intended date for termination.
- 11.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any breach of this Agreement, and the breach is not remediable;

- (b) the other party commits a breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 11.3 Subject to applicable law, either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
 - (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

12. Effects of termination

- 12.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 6, 8, 9, 10, 12, 13, 14 and 17.
- 12.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.
- 12.3 For the avoidance of doubt, the licences of the Software in this Agreement shall terminate upon the termination of this Agreement; and, accordingly, the Licensee must immediately cease to use the Software upon the termination of this Agreement.
- 12.4 Within 30 Business Days following the termination of this Agreement, the Licensee shall:
- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
 - (b) irrevocably delete from all computer systems in its possession or control all copies of the Software, and if the Licensor so requests the Licensee shall procure that a legal representative of the Licensee certifies to the Licensor, in a written document signed by that person and provided to the Licensor within 20 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of this Clause 11.4.

13. Confidentiality

- 13.1 The Parties acknowledge that all information related to the subject matter of this Agreement is confidential. The Parties shall not disclose any confidential information to third parties, and shall be entitled to disclose it only to their personnel, staff, agents and lawyers, on a need-to-know basis and only for the purpose of this Agreement. Before disclosing any confidential information, the Parties shall make sure that proper confidentiality agreements are entered into with said third parties.
- 13.2 EACTDA shall be entitled to disclose the confidential information to other competent EU authorities and bodies, including EU public security entities fighting cybercrime, if necessary for the purpose.

14. Notices

- 14.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 14.2):
- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 14.2 The Parties' contact details for notices under this Clause 14 are as follows:
- (a) in the case of notices sent by the Licensee to the Licensor,
If using postal mail:
EACTDA
Parque Científico y Tecnológico de Gipuzkoa
Paseo Mikeletegi 71 - Planta 3 - local A.1.2
20009, Donostia/San Sebastian (Gipuzkoa)
Spain
and if using electronic email: secretariat@eactda.eu
 - (b) in the case of notices sent by the Licensor to the Licensee,
If using postal mail:
[*** EACTDA MEMBER postal contact details ***].
And if using electronic email: [*** EACTDA MEMBER email contact details ***]
- 14.3 The addressee and contact details set out in Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

15. General

- 15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 15.3 This Agreement may not be amended except by a written document signed by or on behalf of each of the parties.
- 15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 15.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 15.6 This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

16. Interpretation

- 16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 16.2 The Clause headings do not affect the interpretation of this Agreement.
- 16.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

17. Applicable law and jurisdiction

- 17.1 This Agreement is governed by Spanish law.
- 17.2 Parties undertake to attempt to resolve amicably any disagreement that may arise in connection with this Agreement and its execution, failing which disputes shall be subject to the jurisdiction of the ordinary courts. In the event of a dispute that cannot be resolved amicably, the Parties shall submit, expressly waiving any other jurisdiction that may correspond to them, to the exclusive jurisdiction of the Spanish courts, being territorially competent the courts and tribunals of the city of San Sebastian, Spain.

IN WITNESS THEREOF, the Parties have executed this Agreement on the Effective Date.

SIGNED BY Juan Arraiza, duly authorised for and on behalf of the Licensor:

....., on ***** DATE OF SIGNATURE *****

AND
SIGNED BY ***** NAME OF THE EACTDA MEMBER PARTICIPATING IN THIS COLLABORATION *****, duly authorised for and on behalf of the Licensee:

....., on ***** DATE OF SIGNATURE *****

SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)

1. Specification of Software

Deeptthought was originally developed by the Centre for Cybersecurity and Cybercrime Investigation, at University College Dublin, National University of Ireland (referred to as UCD), as part of the FREETOOL project, with the collaboration of volunteer end-user developers.

The Deeptthought version released under the Tools4LEAs has been developed by EACTDA with the contribution of UCD and of volunteer end-user developers.

Deeptthought includes:

Source code, packaged applications, packaging instructions, Python packaging instructions, documentation and any other media related to the software.

2. Software licence

The Licensee acknowledges that all Intellectual Property Rights in the Software and the Documentation belong to the Licensor and to UCD, and the Licensee shall have no rights in or to the Software and/or the Documentation other than the right to use it in accordance with the terms of this Agreement.

The Licensee agrees to mark any copies of the Software and/or Documentation which it may make in any tangible medium with a notice that such copy belongs to the Licensor and to UCD.

The Licensee shall not use the Licensor's Software for any purpose except as expressly licensed hereby in accordance with the provisions of this Agreement. The Licensor does not permit the Licensee to use the Software for commercial purposes and the Licensee will not incorporate the Software into any commercial product without the prior written consent of the Licensor, who will also consult and obtain prior written consent of UCD.

Any future endeavours by the Licensee to further develop the Software or Derivative Work shall be done in consultation with the Licensor, who will also consult UCD. If the Licensor and UCD are unwilling or unable to collaborate on any such future endeavours, the Licensor will notify the Licensee and this will not preclude the Licensee from collaborating with a third party. The Licensor and UCD and the Licensee may enter into a further written agreement in relation to the further development or support and maintenance of the Software. Any such agreement would be on the terms of the terms the Licensor and the Licensee may agree in advance in writing.

The Licensee shall not be entitled to grant sub-licenses of its rights under this Agreement, other than to European Union Law Enforcement Agencies and other EU public entities fighting cybercrime (regardless of these being at European, national, regional, municipal level, or any other level), unless the Licensee obtains the prior written consent of the Licensor and of UCD.

The Licensee acknowledges and agrees that this Agreement places no restriction on the Licensor's and UCD's activities with respect to the Software. Without limiting the scope of the

preceding sentence, the Licensor and UCD reserve for itself the irrevocable, worldwide, and royalty-free right to use the whole or any part of the Software for any and all purposes. For avoidance of doubt, and without limitation, such purposes shall include the purposes of research, teaching and publication.

The Licensee must keep confidential the Software and the Documentation and limit access to the same to those of its employees, agents, and sub-contractors who either have a need to know or who are engaged in the use of the Software or the Documentation. The Licensee shall ensure that whoever gets access to the Software complies with, and has been made aware of the terms of, this Agreement.

The Licensee shall, during the continuance of the Licence, effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised person and retain the Software and all copies thereof under the Licensee's effective control.

The Licensee may make only so many copies of the Software as are reasonably necessary for operational security and use. The Licensee shall ensure that all such copies bear the Licensor's and UCD's proprietary notice.

The Licensee must notify the Licensor immediately if the Licensee becomes aware of any unauthorised use of the whole or any part of the Software and the documentation by any third party; and all such other steps as shall from time to time be necessary to protect the Confidential Information and intellectual property rights of the Licensor in the Software and the documentation.

The Licensee must inform all relevant employees, agents and sub-contractors that the Software and the documentation constitute Confidential Information of the Licensor and that all intellectual property rights therein are the property of the Licensor and of UCD. The Licensee shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause.

The Licensee shall be entitled to make one back-up copy of Software. Any such copy shall in all respects be subject to the terms and conditions of this agreement and shall be deemed to form part of the Software.

The Licensee shall not remove or alter any copyright or other proprietary notice on any of the Software and the documentation.

Upon the termination of the Licence, the Licensee shall return to the Licensor the Software and Documentation and all copies of the whole or any part thereof or, if requested by the Licensor, shall destroy the same (in the case of the Software by erasing them from any media on which they are stored) and certify in writing to the Licensor that they have been destroyed.

The Licensee shall promptly inform (and no later than 2 Business days after becoming aware of the infringement), the Licensor if it becomes aware of any infringement or potential infringement of any Intellectual Property Rights that subsist in the Software, and the Parties shall consult with each other to decide the best way to respond to such infringement.

The Licensor shall have the exclusive right to determine whether or not any litigation shall be instituted, or other action taken in connection with any infringement or potential infringement of any intellectual property rights that subsist in the Software. The Licensee shall not institute any litigation or other action in relation to any such infringement or potential infringement except with the Licensor's prior written agreement.

The Licensee shall not publish, distribute or otherwise disclose the Software and/or the Documentation or any source code, software routines or methods (or any part of them) which comprise the Software to any third party.