

“Licensing-in” licence template

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DOCUMENT CONTROL

Version	Date	Author(s)	Change(s)
0.1	02/03/2022	Juan Arraiza (EACTDA)	TOC and initial text.
0.2	15/03/2022	Sigute Stankeviciute (L3CE; Seconded to EACTDA)	First version for all sections completed. Requested contributions from key stakeholders.
0.3	25/03/2022	Sigute Stankeviciute (L3CE; Seconded to EACTDA)	Updated with received minor corrections and fixes, and feedback from reviewers.
1.0	28/03/2022	Juan Arraiza (EACTDA)	Final version, approved by EACTDA’s Board of the Association and ready to be submitted.
1.1	15/07/2022	Juan Arraiza (EACTDA)	Updated with improvements and recommendations from the external IPR consultancy.
1.2	23/10/2023	Juan Arraiza (EACTDA)	Added Schengen space countries to clauses 5.4, 5.7 and 12.3
1.3	25/04/2024	Juan Arraiza (EACTDA)	Creative Commons license added to this license

LICENCE AGREEMENT

This agreement is signed on _____ of _____ 202_,

BY AND BETWEEN

[*** NAME OF THE EACTDA MEMBER PARTICIPATING IN THIS COLLABORATION ***], a [*** TYPE OF ORGANISATION (E.G., COMPANY, UNIVERSITY, RTO) AND REGISTRATION NUMBER ***], represented by [*** NAME OF THE LEGAL REPRESENTATIVE ***], [*** POSITION OF THE LEGAL REPRESENTATIVE ***], referred to as [*** EACTDA MEMBERS'S ACRONYM ***] or the "**Licensor**", having its principal place of business at [*** ADDRESS OF EACTDA MEMBER ***].

AND

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 "**Licensee**", having its principal place of business at Paseo Mikeletegi 71 - Planta 3 - local A.1.2, 20009, Donostia/San Sebastian (Gipuzkoa), Spain;

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 [*TP's acronym] is a company/organization/university among which activities is the development of software in the field of cybersecurity.
- III. Whereas the Parties entered on [*Date] into a Pre-Agreement establishing the most basic conditions for a potential collaboration concerning the supply of software by [*TP's acronym] to EACTDA, for the development by the latter of derivative software which suits the needs of EU public security entities fighting cybercrime.

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

IV. Whereas EACTDA is interested in the [*Key name of the software, if it has one] software, offered by [*TP's acronym], to further develop it, and [*TP's acronym] is interested in granting a license to EACTDA.

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

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" (IPR) 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 and 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;

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

- (b) any use of the Software contrary to the Documentation by the Licensee or any person authorised by the Licensee to use the Software;
- (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 10 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 during the whole of the period of 10 Business Days following the Effective Date, 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;
- (b) use the Software;
- (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 Licensor acknowledges that the Licensee shall be free to use and license to third parties any derivative works of the Software, so the Licensee can accomplish its goals under the assignment made by the European Union for the public interest.
- 5.4 The Licensee may sub-license the rights granted in Clause 5.1 to European Union and Schengen space Law Enforcement Agencies and other organisations from the public sector with a role in fighting cybercrime (regardless of these being at European, national, regional, municipal level, or any other level).
- 5.5 The licence granted by the Licensor to the Licensee in Clause 5.1 is subject to the limitations regarding sub-licensing rights set out in Part 2 of Schedule 1 (Software Licence Particulars).
- 5.6 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, and the officers and employees of the Licensee's agents, subcontractors, customers, clients, suppliers and service providers (subject to the limitations regarding sub-licensing rights set out in Part 2 of Schedule 1 (Software Licence Particulars)).
- 5.7 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, the licence granted under this Agreement does not allow the Licensee to sell, resell, rent, lease, or loan the Software to European Union and Schengen space Law Enforcement Agencies and other organisations from the public sector with a role in fighting cybercrime (regardless of these being at European, national, regional, municipal level, or any other level). In other words, the Licensee may exclusively grant a sub-license of the Software to said agencies and organisations, as it is included in the derivative software further developed by EACTDA, that shall be licensed to them.
- 5.8 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.

6. No assignment 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.

- 6.2 The Licensee shall not remove or alter any copyright or other proprietary notices appearing on or in copies of the Software.

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 complete and correct.
- 8.7 The Licensor represents and warrants, with respect to all materials provided by Licensor, that:
- (i) the Licensor is the holder of the copyright of the Software and Documentation;
 - (ii) the Licensor has full and sufficient right to grant the license of the rights described in Clause 5.1 and 5.2 to the Licensee; and
 - (iii) the Software and Documentation do not infringe any patent, utility model, copyright, trademarks, designs or other intellectual property rights (including

trade secrets), or similar rights, of any third party, nor has any claim of such infringement been threatened or asserted, and no such claim is pending against the Licensor, or, to the best of the Licensor's knowledge, against any entity from which the Licensor has obtained such rights

8.8 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.

8.9 The Licensor represents and warrants that:

- (i) the Software does not contain any code, programming instruction or set of instructions that is intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files, or hardware without the consent and intent of the computer user; and
- (ii) the Software does not contain any virus or computer software code, routines or hardware components designed to disable, damage, impair, or erase the Software or other software or data.

8.10 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 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, without prejudice to clause 8.9.

9.2 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.

9.3 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. If a claim arises that the Software infringes the intellectual property rights of a third party, or if in the Licensor's judgment, such a claim is likely to arise, the Licensee agrees to allow the Licensor to procure the right for the Licensee to continue to exercise its rights and licenses granted, being the Licensor responsible for any damages that the Licensee might suffer, or to replace or modify the Software in a functionally equivalent manner so it becomes non-infringing.
- 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 to the Licensor written notice 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. However, the European Union and Schengen space public security entities fighting cybercrime which may be using the derivative software created from the Software at the date of termination shall be entitled to keep using such a modified software (no the Software alone) without restrictions from the Licensor. Furthermore, EACTDA shall be fully entitled to make any uses of the derivative Software as it pleases, without any time limitation, as long as they comply with the purpose of the Agreement (i.e., for fighting cybercrime purposes).
- 12.4 Within 20 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,

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 10 Business Days following the receipt of the Licensor's request, that the Licensee has fully complied with the requirements of Clause 12.4.

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 the 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, by email 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 12 are as follows:
- (a) in the case of notices sent by the Licensee to the Licensor,
If using postal mail:
[* EACTDA MEMBER postal contact details ***]**.
And if using electronic email: **[*** EACTDA MEMBER email contact details ***]**
 - (b) in the case of notices sent by the Licensor to the Licensee,
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
- 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 Apart from what is established in Clause 5 of this Agreement, 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 [*** NAME OF THE EACTDA MEMBER PARTICIPATING IN THIS COLLABORATION ***], duly authorised for and on behalf of the Licensor:

....., on [*** DATE OF SIGNATURE ***]

AND

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

....., on [*** DATE OF SIGNATURE ***]

SCHEDULE 1 (SOFTWARE LICENCE PARTICULARS)

1. Specification of Software

[** Specify Software

** Describe the Software package being licensed (e.g., source code version, components, SBOM, etc.

** Add location and hash code(s) of the Software being licensed **]

2. Software licence

[** Insert software licence details, in particular the commercial limitations on usage **]