

# Safe Exam Browser (SEB) Consortium Agreement

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## CONSORTIUM AGREEMENT

THIS CONSORTIUM AGREEMENT set forth

### BETWEEN

- EIDGENOESSISCHE TECHNISCHE HOCHSCHULE ZUERICH (ETH Zürich)
- SWITCH foundation
- Future members to come

- hereinafter, jointly or individually, referred to as "Parties" or "Party"-

relating to the Project entitled

»Safe Exam Browser (SEB)«

**WHEREAS** The use of online exams increases tremendously within traditional educational institutions, and far beyond, with the recent rise in massive open online courses;

**WHEREAS** The vision of the SEB project is to deliver, enhance and support the open-source product of choice for educational organisations wishing to perform online examinations with a secure and reliable lockdown browser. SEB shall be recognised for its quality of software offering and its engagement with the user, standards and development communities;

**WHEREAS** The open source project SEB requires ongoing funding to continue its maintenance, development and support activities;

## SEB Consortium Agreement

### THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

#### Section 1: Definitions

a) *Safe Exam Browser (SEB)*: The Safe Exam Browser (SEB) is a free open-source software released under the Mozilla Public License (MPL). The application is available for Windows and Mac OS X. SEB helps to impede fraud in online examinations by preventing access to unwanted resources and utilities such as system functions, websites, applications and files, and turns any computer into a secure workstation. SEB consists of two main components: (1) a kiosk application that prevents access to unwanted resources and utilities and (2) a browser to render the exam environment. The kiosk component locks down the computer by preventing access to unwanted utilities by either blocking commands (e.g. keyboard shortcuts and popup windows) or by making them inaccessible to the user by removing them from the user interface (e.g. the task manager, start menu, or third-party software). The browser component renders the actual exam environment by accessing, for example, the exam module of a learning management system or an e-assessment suite via Internet or LAN. If additional resources and utilities — such as specific “third-party” applications (i.e. any software or application that can be run on the exam client), files or web resources — are desired in an online exam, individual SEB lockdown functions may be deactivated and access to specific applications granted.

b) *Online Exams*: “online exams” are examinations conducted on a computer, which is connected to a network (intranet or Internet) – in contrast to “offline exams”. The term “online exam” per se has no implications for an examination’s format, content or organization. Online exams may involve multiple-choice questions, essay writing, designing a machine part with CAD software, conducting a literature review using online bibliographic databases - or anything else imaginable and technologically feasible. Online exams may be conducted on centrally managed hardware or on Bring Your Own Device (BYOD) hardware centralised in an exam room or distributed in remote exam locations.

c) *SEB Software Engineers*: Developers actively producing and maintaining SEB code (see also Clause 3).

d) *Higher Educational Institutions*: institutions include exclusively Universities, Institutes of Technology, Universities of Applied Sciences and Universities of Teacher Education.

#### Section 2: Purpose

The purpose of this Consortium Agreement is to specify, with respect to the SEB open source project, the relationship among the Parties, in particular concerning the organisation of the work between the Parties, the management and the rights and obligations of the Parties concerning inter alia liability, Access Rights and dispute resolution.

## SEB Consortium Agreement

For avoidance of doubt, the consortium shall not provide any customising of the SEB software or sell anything to members or third parties. Furthermore, the consortium is not a legal entity, does not employ any staff and does not sign any contracts in the name of the consortium or the consortium members.

### Section 3: Project Management, Software Engineering and Administration

*Administrative Support:* SWITCH shall appoint a *Consortium Manager* from amongst its employees, who will provide administrative support to the Consortium, and ensure the day-to-day running of the consortium.

Furthermore the Consortium Manager shall be responsible for:

- Drafting the operational plan and budget and submitting it to the board for approval
- Organising the Consortium Board meetings
- Building and maintaining the Consortium website
- Acting as secretary and minute-taker to the Board

*SEB Project Management and Software Engineering:* ETH Zurich shall provide the infrastructure for the management and the software engineering of the SEB project to the Consortium through the administrative department LET (Lehrentwicklung und -technologie).

ETH Zurich shall be responsible for:

- Executing the operational plan approved by the consortium board
- Managing the SEB open source project
- Creating the SEB development roadmap in coordination with the Consortium and the SEB community
- Financing one (1) software engineer through LET's annual budget
- Maintaining the SEB project website
- Billing of membership fees through LET in favour of the SEB Consortium
- Carrying out the financial administration and accounting (account shall be opened in favour of the SEB Consortium at ETH Zurich)

### Section 4: Membership categories, fees and allocation of resources

Membership is open to European

- educational and academic institutions (public and private)
- foundations
- public authorities
- companies (for profit and non-profit)

with programs and missions consistent with the purposes of the Consortium:

## SEB Consortium Agreement

### 4.1 Educational and academic institutions, as well as foundations

Category	Annual Membership Fee	Who may join?	Benefits
Principal Members	€ 50,000	Institutions of Higher Education, foundations	Prioritize SEB development goals, get direct, personal consultancy by the SEB developers. Logo of institution/company is placed on SEB consortium website, voting rights SEB Board
Gold Members	€ 10,000	Institutions of Higher Education, foundations, other educational and academic Institutions	Suggest SEB development goals, build a feature list for SEB, get direct, personal consultancy by the SEB developers. Logo of institution is placed on consortium website
Silver Members	€ 5,000	Institutions of higher Education, other educational and academic Institutions	Suggest SEB development goals, logo of institution is placed on consortium website
Bronze Members	€ 2,500	Small academic Institutions	Logo of institution is placed on consortium website

## SEB Consortium Agreement

### 4.2 For-profit and non-profit companies, as well as public authorities

Category	Annual Membership fee	Who may join?	Benefits
Principal Members	€ 50,000	Companies	Prioritize SEB development goals, get direct, personal consultancy by the SEB developers. Logo of the company is placed on SEB consortium website, voting rights SEB Board
Gold	€ 10,000	Medium-sized companies, public authorities	Suggest SEB development goals, build a feature list for SEB, get direct, personal consultancy by the SEB developers. Logo of the company is placed on consortium website
Silver	€ 5,000	Small companies, public authorities	Logo of the company/ public authority is placed on consortium website

All membership fees are due for payment on January 1st each year. ETH Zurich (LET) will bill the members and will make the debt collection. The financial year corresponds to the calendar year.

For avoidance of doubt:

- ETH Zurich and SWITCH, as founding members, are principal members.
- ETH Zurich shall pay no membership fees since its commitment to the consortium is provided in-kind (see section 3). SWITCH foundation shall pay the principal membership fee as well as its in-kind contributions (see section 3).
- The SWITCH foundation, as a principal member with one vote, acts as a representative of the Swiss Higher Educational Institutions. All these institutions are on a silver membership level and do not have to pay individual membership fees for that level.
- Swiss Higher Educational Institutions desiring the benefits of a gold or principal level membership will apply for this independently of the SWITCH representation, i.e. these institutions will pay the full membership fees for the gold or principal level.

## SEB Consortium Agreement

### 4.2 Rights and Duties of members

- Payment of membership fee. Nonpayment leads to exclusion of the member from the Consortium.
- If an institution withdraws, or is excluded, from the membership in the course of a financial year, the SEB Consortium shall retain the membership fee already paid by the withdrawing/excluding member.
- Right of the Principal Members to appoint one representative each to the SEB Consortium Board.
- Personal consultancy for principal and gold members by the SEB developers includes solely consultancy by mail or phone
- Gold, silver and bronze members have no voting rights in the SEB Board.
- Benefits attributed according to the membership category.

### 4.3 Financing and allocation of resources

The consortium financing is ensured by the yearly membership fees. Members agree that the membership fee shall be used solely to finance:

- SEB Software engineer positions
- Overhead costs such as board meetings (excluding any transportation/accommodation costs), website maintenance, domain registration, trademark registration, etc.

of the SEB open source project (see Section 3).

Any financial surplus shall stay in the budget of the Consortium and be used for financing the Consortium tasks in the upcoming financial year.

## Section 5: Governance structure

### 5.1 General structure

The **SEB Consortium Board** is the decision-making body of the Consortium.

The **SEB Consortium Manager** ensures the day-to-day running of the Consortium (see Section 3).

### 5.2 SEB Board

The SEB board shall consist of not more than five (5) consortium principal members with one representative each ("Board Members").

The Consortium Manager shall attend the SEB Board meetings in an advisory capacity, but has no voting rights.

## SEB Consortium Agreement

Each representative of the principal members of the SEB Board shall have one vote. As a rule the principle of "ad personam participation" shall apply. If "ad personam participation" of the representative is not possible, the principal member appoints a substitute.

The SEB Board shall constitute itself. As a rule, the position of a Chairwoman/Chairman of the Board shall be rotated every year from one principal member to the next one.

Right and Duties of the SEB Board are mainly:

- Admission of new members and exclusion of members
- Approving SEB development roadmap
- Prioritizing SEB development targets
- Approving the annual budget
- Financial controlling, including approval of audited annual accounts
- Defining the membership levels and fees
- Modification of the Consortium agreement
- Deciding on actions to take if the Consortium runs out of budget or unexpected financial losses occur

### 5.3 Operational procedures

The SEB Board shall meet as often the business may require it, but at least once every financial year.

The meetings shall be called by the Chairperson of the SEB Board or by the Consortium Director on her/his behalf at least 14 calendar days before the ordinary meeting and 7 calendar days preceding an extraordinary meeting in writing specifying the agenda. In addition, every member of the SEB Board member may request the convocation of a Meeting by submitting a written agenda for the meeting to be called.

Any agenda item requiring a decision by the board Members must be identified as such on the agenda. Any board Member may add an item to the original agenda by written notification to all of the other Members, no later than 7 calendar days preceding the meeting.

Any of the Members can unanimously agree to add a new item to the original agenda during a board meeting.

## SEB Consortium Agreement

### 5.4 Resolutions

Each member of the SEB Board shall have one vote. Proxy votes shall be allowed.

**Unanimity of the votes** cast shall be required for the resolutions concerning

- Admission and exclusion of members;
- Modifications of the Consortium Agreement, especially in case of defining new fees.

For all other resolutions - as long as the SEB Board consists of only two (2) Board members - decisions are taken unanimously. Once the Board consists of 3 or more members, decisions shall be taken by simple majority of the votes. In case of a tie, the Chairwoman/Chairman shall have a casting vote.

Quorum shall be reached if 2 out of 3, 3 out of 4 or 4 out of 5 of the board members entitled to vote are present.

Resolutions may be passed to board members by circular means of letters, telefax, email, videoconferences or other media.

### Section 6: Liability towards each other

#### 6.1 No warranties

In respect of any information or materials supplied by one Party (Member) to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

Therefore,

- the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials, and
- no Party granting Access Rights shall be liable in case of infringement of proprietary rights of a third party resulting from any other Party (or its Affiliates) exercising its Access Rights.

ETH Zurich, SWITCH foundation and other parties provide services to the Consortium members with due diligence and in accordance with the recognized state of the art. Any further warranty, in particular for the correctness of data and deliverable, shall be excluded.

Moreover, the liability for damages resulting from defects of the hardware, software or associated data material used within the scope of the Consortium shall be excluded.

## **SEB Consortium Agreement**

### **6.2 Limitations of contractual liability**

No Party (Member) shall be responsible to any other Party for any indirect or consequential loss or similar damage such as, but not limited to, loss of profit, loss of revenue or loss of contracts, provided such damage was not caused by a wilful act.

### **6.3 Damage caused to third parties**

Each Party (Member) shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party's obligations by it or on its behalf under this Consortium Agreement.

### **6.4 Force Majeure**

Neither party shall be liable for the non-performance of its obligations under the collaboration project, if the non-performance is due to circumstances outside the control of the parties (force majeure).

### **Section 7: Use of names, logos or trademarks**

Nothing in this Consortium Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties, or any of their logos or trademarks, without their prior written approval.

### **Section 8: Non-disclosure of information**

- 8.1** Parties undertake to hold in confidence any and all documents marked as "secret" or "confidential" or similar and any other information which the Parties have made available to one another in a manner that clearly indicates their confidential nature ("Confidential Information"), not to use such Confidential Information for any other purpose than the activities of the SEB Consortium and not to disclose such information to any third party. Such obligation of confidentiality shall survive termination of this Agreement and be effective until five (5) years following receipt of such Confidential Information, and shall not extend to information that has become part of the public domain in any way other than by fault of the receiving Party.
- 8.2** The receiving Party shall be responsible for the fulfilment of the above obligations on the part of their employees and shall ensure that their employees remain so obliged, as far as legally possible, during and after the end of the Consortium and/or after the termination of employment.

## SEB Consortium Agreement

**8.3** The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:

- the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidence by a third party who, to the Recipient's best knowledge, is in lawful possession thereof and under no obligation of confidence to the Disclosing Party;
- the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
- the Confidential Information was already known to the Recipient prior to disclosure.

### Section 9: Miscellaneous

#### 9.1 Entry into force

An entity becomes a Party to this Consortium Agreement upon signature of the agreement by a duly authorised representative.

This Consortium Agreement shall have effect from **July 1, 2016**.

A new Party (means Members as per section 4) joins the Consortium upon signature of the accession document Attachment by the new Party and the Consortium Manager. Such accession shall have effect from the date identified in the accession document.

#### 9.2 Duration and termination

This Consortium Agreement shall end on **December 31, 2018**. Principal Members may discuss a prolongation of the Agreement at the beginning of March 2018 at the latest.

The Principal Members may only terminate the Agreement for a substantial reason before the end of the period. This must ensue in writing, and by observing a notice period of 6 months towards 31. December (end of financial year).

All membership fees already paid are forfeited in any case with the notice of resignation

In case of termination of the SEB Consortium, all accumulated financial surplus shall be reimbursed to the actual members of the Consortium according to their membership level. Any further financial surplus shall be donated to a non-profit organisation in the field of open-source software. The non-profit organisation shall be not a member of the SEB consortium at present, or in the past, and shall be nominated by the SEB Consortium Board.

## **SEB Consortium Agreement**

### **9.3 Attachments, inconsistencies and severability**

This Consortium Agreement consists of this core text and

Attachment 1 (Accession document)

Should any provision of this Consortium Agreement become invalid, illegal or unenforceable, it shall not affect the validity of the remaining provisions of this Consortium Agreement. In such a case, the Parties concerned shall be entitled to request that a valid and practicable provision be negotiated, which fulfils the purpose of the original provision.

### **9.4 No representation, partnership or agency**

The Parties shall not be entitled to act or to make legally binding declarations on behalf of any other Party. Nothing in this Consortium Agreement shall be deemed to constitute a joint venture, agency, partnership, interest grouping or any other kind of formal business grouping or entity between the Parties.

### **9.5 Notices and other communication**

Any notice to be given under this Consortium Agreement shall be sent in written form to the addresses and recipients, as listed in the most current address list kept by the Consortium Manager.

Any change of persons or contact details shall be notified immediately by the respective Party to the consortium manager. The address list shall be accessible to all concerned.

### **9.6 Assignment and amendments**

No rights or obligations of the Parties arising from this Consortium Agreement may be assigned or transferred, in whole or in part, to any third party without the other Parties' prior formal approval.

Amendments and modifications to the text of this Consortium Agreement have to be done in a written form.

### **9.7 Language**

This Consortium Agreement is drawn up in English, which language shall govern all documents, notices, meetings, arbitral proceedings and processes relative thereto.

### **9.8 Applicable law and place of jurisdiction**

This Consortium Agreement shall be construed in accordance with, and governed by, the laws of Switzerland.

## SEB Consortium Agreement

Any disagreement or dispute that may arise in the execution, interpretation or application of this Agreement shall be resolved by trustful and amicable negotiation between the Parties. If no settlement is possible, the place of jurisdiction is Zurich/Switzerland.

### 9.9 Survival of rights and obligations

The provisions relating to Access Rights (Section 6) and Confidentiality (Section 8), for the time period mentioned therein, as well as for Liability, Applicable law and Settlement of disputes, shall survive the expiration or termination of this Consortium Agreement. Termination shall not affect any rights or obligations of a Party leaving the Consortium incurred prior to the date of termination.

#### Consortium Member

Signature(s)

Name(s):

Title(s):

Date:

#### Consortium Member

Signature(s)

Name(s):

Title(s):

Date:

## SEB Consortium Agreement

[Attachment: Accession document]

### ACCESSION

of a new (principal/gold/silver/bronze member) Party to

SEB Consortium Agreement, version [..., YYYY-MM-DD]

[OFFICIAL NAME OF THE NEW PARTY]

hereby consents to become a Party to the Consortium Agreement identified above and accepts all the rights and obligations of a Party starting [date].

[OFFICIAL NAME OF THE CONSORTIUM MANAGER AS IDENTIFIED IN THE KTI-GA]

hereby certifies that the Consortium has accepted in the meeting held on [date] the accession of [the name of the new Party] to the Consortium starting [date].

This Accession document has been prepared as 2 originals, to be duly signed by the undersigned authorised representatives.

[Date and Place]

[INSERT NAME OF THE NEW PARTY]

Signature(s)

Name(s)

Title(s)

[Date and Place]

[INSERT NAME OF THE CONSORTIUM MANAGER]

Signature(s)

Name(s)

Title(s)

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