

General Terms and Conditions of the SEB Alliance

November 2020

1 Definitions

- 1.1 **Contributor** means an institution of higher education, an academic institution, an educational institution, a foundation, a public authority or a company placing a signed contributor application form with ETHZ.
- 1.2 **ETHZ** means ETH Zürich, the Federal Institute of Technology, duly incorporated and existing under the laws of Switzerland with principle office located at Rämistrasse 101, 8092 Zurich, Switzerland.
- 1.3 **Party** means –as the case may be – ETHZ or Contributor and **Parties** means ETHZ and Customer.
- 1.4 **Safe Exam Browser** or **SEB** is a free open-source software released under the Mozilla Public License (MPL). The application is currently available for Windows iOS and macOS. 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.
- 1.5 **SEB developer** means an ETHZ employee actively producing and maintaining the SEB code.
- 1.6 **Contribution Level** has the meaning as ascribed to it in Section **Error! Reference source not found..**

2 Contributor Application Procedure

- 2.1 Contributor may contribute to the SEB by placing a duly signed contributor application form.

- 2.2 ETHZ will only accept reputable parties as Contributors that meet ETHZ's internal standards of integrity and creditworthiness. ETHZ may reject a placed contribution application without giving any reasons.
- 2.3 Contributor may place a contributor application for a calendar year or the remaining parts of it
- 2.4 The Contributor engagement will automatically renew the next calendar year unless a Party terminates the Contributor engagement by giving the other Party a written notice at any time of a given calendar year.
- 2.5 Contributor may change the subscribed Contribution Level by placing a new Contributor application form with ETHZ at any time of a given calendar year. The changed Contribution Level will be applicable as of the following calendar year.

3 Contribution Level

- 3.1 **Diamond Contributor:** (only available to institutions of higher education academic institutions and foundations): Contributor may prioritize SEB development goals together with other contributors in the SEB council, get direct, personal consultancy by the SEB developers. Verification of the code signature of a branded SEB is possible. Logo of institution/company is placed on SEB Alliance website.

Yearly Fee: EUR 50'000 including VAT

- 3.2 **Platinum Contributor** (available to institutions of higher education, foundations, other educational and academic institutions, companies and public authorities): Contributor may suggest SEB development goals, build a feature list for SEB, get direct, personal consultancy by the SEB developers, including for customizing SEB. Verification of the code signature of a branded SEB is possible. Logo of institution is placed on SEB Alliance website.

Yearly Fee: EUR 25'000 incl. VAT

- 3.3 **Golden Contributor** (available to institutions of higher education, foundations, other educational and academic institutions, medium-sized companies and public authorities): Contributor may suggest SEB development goals, build a feature list for SEB, get direct, personal consultancy by the SEB developers. Logo of institution is placed on SEB Alliance website.

Yearly Fee: EUR 10'000 incl. VAT

- 3.4 **Silver Contributor** (available to institutions of higher education, other educational and academic institutions, small companies and public authorities): Contributor may suggest SEB development goals, logo of institution is placed on SEB Alliance website.

Yearly Fee: EUR 5'000 incl. VAT

- 3.5 **Bronze Contributor** (available to small academic institutions): Logo of institution is placed on SEB Alliance website.

Yearly Fee: EUR 2'500 incl. VAT

4 Fees and Payment Terms

- 4.1 Contributor shall pay the Yearly Fee within 30 calendar days from the date of invoice. ETHZ will place Contributor's logo on the SEB Alliance website upon receipt of the invoiced amount.
- 4.2 ETHZ may change the Yearly Fee as it deems fit.
- 4.3 ETHZ will notice by email Contributor about changes to the Yearly Fee by 31 August. If Contributor does not terminate the Contributor engagement at any time in the given year by email to ETHZ the changed Yearly Fee will apply as of the following calendar year.

5 Limitation of Liability

- 5.1 Each Party assumes liability for personal damages and damages to property according to the applicable mandatory laws.
- 5.2 Each Party agrees to defend, indemnify and hold harmless, without any limitation, the other Party from and against any damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees) related to the gross negligence or wilful misconduct in the performance or non-performance of this Agreement.
- 5.3 Except as set forth in Section 5.2 here above, neither Party shall be liable, whether in contract, tort (including negligence or strict liability) or any other legal or equitable theory, for consequential damages such as but not limited to research interruption or lost revenue, profits or sales, loss of information and data, or for any special, incidental or punitive damages.

6 Data Protection and Data Security

- 6.1 The Parties undertake to comply with the provisions of Swiss data protection legislation. They undertake to take the economically reasonable and technically and organizationally possible measures to ensure that data arising in the framework of execution of the Contributor application are effectively protected against unauthorized knowledge by third parties.
- 6.2 Personal data may be processed only for the purpose and to the extent necessary for performance and execution of the Contributor application.

7 Law and Jurisdiction

- 7.1 The construction, performance and validity of the Contributor application and all disputes arising herefrom or related hereto, shall be governed by and construed exclusively in accordance with Swiss law without giving effect to conflict of law provisions.
- 7.2 The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) (3) is expressly excluded.
- 7.3 Exclusive place of jurisdiction is Zurich, Switzerland.

8 Miscellaneous

- 8.1 Assignment: neither Party may assign or pledge this Contribution application or any claims to a third party without the written approval of the other Party which shall not be unreasonably withheld.
- 8.2 Confidentiality: the Parties shall treat all facts and information confidentially that are neither obvious nor generally accessible. In cases of doubt, facts and information shall be treated confidentially. The Parties will take all economically reasonable and technically and organizationally possible measures to ensure that confidential facts and information are effectively protected from access and knowledge by unauthorized parties. The Contributor takes note that ETHZ may have to disclose placed Contributor applications under the Swiss Freedom of Information Act.
- 8.3 Unforeseeable events: neither Party shall be liable for non-performance if the non-performance is due to circumstances outside the control of ETHZ such as but not limited to acts of war, public disorders, embargo, riots, explosions, fires, earthquakes, tsunami, flood, cyclone, volcanic eruptions, acts of God, radioactive contamination or ionizing radiation, epidemic, pandemic or power supply interruption.
- 8.4 Changes to the general terms and conditions: ETHZ may change the general terms and conditions as it deems fit. ETHZ will notice by email inform Contributor about changes by 31 August. If Contributor does not terminate the Contributor engagement at any time of a given year by email to ETHZ the changed general terms and conditions will apply as of the following calendar year.
- 8.5 Termination of the SEB Alliance: ETHZ may terminate the SEB Alliance at any time, such termination being effective as per the end of the calendar year. For the avoidance of doubt ETHZ will not refund any Yearly Fees
- 8.6 Termination of a Contributor engagement: If an individual Contributor engagement is terminated at any time by the Contributor (with or without reason) or by ETHZ at any time for cause, ETHZ will not refund any Yearly Fees.