

# AAI Service Agreement

(the *Agreement*)

between

**SWITCH**

Werdstrasse 2, CH-8021 Zürich

*SWITCH*

and

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*FEDERATION MEMBER*

(the *Parties* and each a *Party*)

## **WHEREAS:**

- A. The SWITCH AAI Federation (the *Federation*) is a group of organizations which cooperate in the area of inter-organizational authentication and authorization and, for this purpose, operate a common infrastructure;
- B. The FEDERATION MEMBER wishes to join the Federation and to receive certain services from SWITCH (the *Services*) and to comply (and secure compliance) with a common set of policies and practices;
- C. SWITCH wishes to provide these Services at agreed terms and in a cooperative and mutually supportive manner;

## **NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

## 1. Definitions

Capitalized terms used in this Agreement have the meaning as set forth in Exhibit 1 or as elsewhere defined in this Agreement or any Exhibit thereto.

## 2. Introduction to AAI

- 2.1 The Authentication and Authorization Infrastructure (AAI) is a joint effort of the Swiss Higher Education System. AAI allows the users of the participating organizations to access restricted electronic resources in an easy and standardized way. Examples of such resources are e-learning courses, databases, web sites and web applications - all restricted to certain users or user groups.
- 2.2 These resources can be located at the organization where an End User is registered (the Home Organization), as well as at other participating organizations (the Resource Owners), i.e. AAI is an infrastructure that allows inter-organizational access. It is a basic concept of AAI that an End User is only registered at one place - the user's Home Organization, except in case of a Virtual Home Organization, where registration occurs with the respective Resource Owner. Whenever that End User is accessing a resource at another place, a strictly controlled set of user data (Attributes) is sent to that resource. Based on the received Attributes, the Resource Owner grants or denies access to the End User.
- 2.3 The goals of the AAI are increased simplicity and security for End Users, Resource Owners as well as the Federation members' IT departments in granting access to Resources. Additional goals are increased reliability of user data at the Resource (high level of confidence that they are correct and current), ease of user management (registration procedure may be dropped completely) for Resource Owners and user privacy.
- 2.4 By entering into this Agreement, an organization becomes a member of the Federation. Some central functions and services of AAI are provided by SWITCH, which acts as the AAI service provider and, at the same time, is also a Home Organization. Further information about AAI is available at <http://www.switch.ch/aa1>.

## 3. Purpose and Scope of this Agreement

- 3.1 The Federation members have to agree on a common set of policies and rules, e.g. the "AAI policy" in order to allow for a smooth and proper functioning of AAI and compliance with legal obligations. Instead of entering into a number of bilateral contracts between any two organizations, SWITCH has agreed to assume the role of a central enabling agent. According to this model, each organization executes a single service agreement with SWITCH. The sum of these agreements with SWITCH build the legal framework of the AAI.
- 3.2 This Agreement governs the following issues:
  - (a) Data protection issues: privacy concerns and data protection regulations make it mandatory that a legal basis for any transmission of user data between two organizations exists. This agreement and the standard data protection clause as per Exhibit 5 (which should be added to all Home Organizations' usage rules) is the basis for the transmission of such data in the context of AAI.

- (b) Rights and obligations of the Federation members and SWITCH: in particular, this Agreement obliges all parties to adhere to the AAI policy as reproduced in Exhibit 3.
- (c) Quality of service delivery;
- (d) Compliance with Software license terms (Exhibit 4).

3.3 The Agreement is supplemented by a total of five Exhibits which are attached hereto. In particular they cover:

- (a) Exhibit 1: Glossary

A glossary of all AAI specific terms used throughout this document and the Exhibits.

- (b) Exhibit 2: AAI Services (Base Package) and Dependencies

A description of the Services provided by SWITCH in its function as the AAI service provider. These Services are considered essential for a proper development and functioning of the AAI and are called the "base package". It is mandatory for all AAI participants to subscribe thereto. In addition, the rights and obligations of both SWITCH and the Federation members related to these Services are defined. Optional AAI services provided by SWITCH (such as the operation of a Virtual Home Organization or others) are also available but they are not part of this Agreement and need to be ordered separately.

- (c) Exhibit 3: AAI Policy

This document defines concepts related to the AAI federation and establishes a firm set of rules that all AAI participants are expected to follow. It also lays the groundwork for the exchange of Attributes between organizations in accordance with the data protection laws.

- (d) Exhibit 4: Software Licenses

This Exhibit reproduces the software licenses required for the provision of the Services. In particular, it lists the "OpenSAML-", "Shibboleth-", "Curl-", "Log4cpp-" and "OpenSSL-License".

- (e) Exhibit 5: End User Sample Clauses

In order to satisfy the data protection laws and regulations, and in order to limit the mutual liabilities arising from the use of the AAI Services by an End User, clauses as proposed in Exhibit 5 have to be included into the agreements between a Home Organizations and the End User.

## **4. Services provided by SWITCH**

4.1 The Services provided hereunder to the FEDERATION MEMBER are:

- (a) Central AAI Services (Base Package) as set forth in Exhibit 2 (as amended and published by SWITCH from time to time in accordance with Sec. 6.5 hereafter);
- (b) Additional AAI Services (optional) as set forth on SWITCH's AAI website (as amended by SWITCH from time to time); and
- (c) Related AAI Services (optional) as set forth on SWITCH's AAI website (as amended by SWITCH from time to time).

4.2 Additional and Related AAI Services are out of scope unless ordered by the FEDERATION MEMBER in accordance with the ordering procedure published by SWITCH and accepted by SWITCH.

## **5. Delivery and Acceptance**

5.1 The Services will be provided from a SWITCH site unless otherwise indicated by SWITCH.

5.2 Services are deemed accepted when delivered. There will be no formal acceptance tests for Services.

5.3 The FEDERATION MEMBER will timely inform SWITCH if Services have not been delivered by the agreed time or if quality of Service is insufficient, stating the reasons for its dissatisfaction in detail. All remedial work by SWITCH will be done professionally and as expeditiously as reasonably practicable.

## **6. Rights and Obligations of SWITCH**

6.1 SWITCH will provide the Services with due care, taking into account generally accepted business practices, the legitimate interests of the Federation members as well as the available resources of SWITCH and with a view to efficiently control cost of Service delivery.

6.2 SWITCH will have the competence of selecting hardware and software and will commit itself to a configuration suiting the actual needs of SWITCH and the members of the Federation.

6.3 SWITCH will be relieved from providing the Services if the requirements as listed in Exhibit 2 (sec. 2) are not met, in case of force majeure or if the FEDERATION MEMBER uses or permits the use of the Services in violation of the terms of this Agreement or the applicable law.

6.4 Delivery dates will be estimates only, and unless SWITCH expressly agrees to be bound in writing by a delivery date as being of essence to the applicable Service, SWITCH will not be liable for any damages arising from late delivery.

6.5 SWITCH may change the Services upon reasonable prior notice published on the dedicated SWITCH AAI website. The FEDERATION MEMBER will receive a notice of such changes and will be given an opportunity to comment thereon.

6.6 The Parties are aware of the fact that the resources of SWITCH may not allow to provide the Services free of any separate charges at all times and that it may become

necessary to levy additional fees from the Federation members therefore. Such additional fees shall be introduced in accordance with the then current procedure to establish the tariffs of and the funding for the other SWITCH services.

## **7. Rights and Obligations of FEDERATION MEMBER**

- 7.1 The FEDERATION MEMBER will secure that the Dependencies as per Exhibit 2 are met.
- 7.2 The FEDERATION MEMBER will cooperate with SWITCH and perform all obligations reasonably required to enable the proper functioning of the Services with due care, taking into account generally accepted business practices. These obligations include, but are not limited to, providing the information, the interface data, the non-monetary resources, the rights and similar services, access rights and permissions etc.. The FEDERATION MEMBER will undertake best efforts to allow SWITCH to comply with its contractual obligations hereunder.
- 7.3 The FEDERATION MEMBER will refrain from altering or otherwise interfering with the Services and systems provided by SWITCH except as required for the proper operation thereof.
- 7.4 The FEDERATION MEMBER will comply and will procure that the End Users comply with the usage rules and policies as set forth in Exhibit 3. A misuse of the Services by an End User will be attributed to the Home Organization where such End User is accredited.
- 7.5 The FEDERATION MEMBER will comply and will procure that the End Users comply with the license terms of the software employed for the delivery of the Services, as set forth in Exhibit 4.
- 7.6 The FEDERATION MEMBER will not make the Services available to any third party which is not an End User without the prior written consent of SWITCH.
- 7.7 To the extent that the FEDERATION MEMBER, either as a Home Organization or, in the case of a Virtual Home Organization, as a Resource Owner, is registering End Users, it will be responsible for the accuracy and reliability of such data.

## **8. Representations and Warranties**

- 8.1 The Parties represent and warrant that:
  - (a) they have full power to enter into and perform their obligations under this Agreement and have taken all necessary action to that effect; and
  - (b) they have obtained and will maintain throughout the term of this Agreement, all rights, licenses, permissions and approvals, including all registrations in accordance with and as required by the applicable data protection legislation, which are necessary to provide and obtain the Services in accordance with this Agreement.
- 8.2 SWITCH represents and warrants that:

- (a) it will perform its obligations under this Agreement in accordance with the standards of performance set forth herein; and
- (b) the software used to provide the Services does not infringe upon the proprietary rights of any third party.

8.3 The FEDERATION MEMBER represents and warrants that:

- (a) it will use the Services and procure that the End Users use the Services in accordance with the Policy Document in Exhibit 3 and all applicable laws including but not limited to data protection and privacy laws; and
- (b) it complies with and will procure compliance with the terms of the license agreements concluded between the Resource Owner and the subscriber to the Resources.

8.4 To the extent legally permitted, all other representations and warranties, including (but not limited) to the representation that the Services are merchantable or fit for the intended purpose, are hereby waived.

8.5 With regard to the use and redistribution of certain software included in the Services, which software has been obtained under a GNU General Public License or similar instrument (see Exhibit 4), the following will apply:

This software is provided by the copyright holders and contributors "AS IS", and with all faults. Any express or implied warranties, including, but not limited to the implied warranties of merchantability or fitness for a particular purpose or non-infringement of third party rights, are hereby disclaimed. In no event shall the authors or contributors to such software be liable for any direct, indirect, incidental, special exemplary or consequential damages (including, but not limited to procurement of substitute goods or services, loss of use, data or profits, business interruption et al.) however caused and on any theory of liability, whether in contract, strict liability or tort (including negligence or otherwise) arising in any way out of the use of or other dealings with this software, even if advised of the possibility of such damage.

## 9. Remedies

9.1 In case of any breach of the obligations and warranties of SWITCH hereunder, the FEDERATION MEMBER will have the following remedies:

- (a) to request corrective action for all remedial breaches; or
- (b) to terminate the Agreement in accordance with Section 13 below.

9.2 The above remedies are exclusive, and all and any statutory remedies are hereby waived.

## 10. Intellectual Property / Software

10.1 Except as provided herein, all rights and interest in the AAI-concept, the know-how, the documents, the tools and the software (together: the *SWITCH IP*) employed, delivered or developed by SWITCH as part of the Service delivery vests in SWITCH.

- 10.2 For all such SWITCH IP, SWITCH grants to the FEDERATION MEMBER for the term of this Agreement a worldwide, nonexclusive, non-transferable, royalty-free license to use and permit the FEDERATION MEMBER's agents, representatives and End Users to use such SWITCH IP, solely in connection with the provision of the Services.
- 10.3 For third party software which has been obtained by SWITCH under a GNU General Public License or similar terms (including the GNU Lesser General Public License), the terms of the GNU General Public License (Version 2) will apply with regard to the FEDERATION MEMBER and the End Users who will have all rights and privileges contained therein and nothing in this Agreement will be read to diminish these rights and privileges. The terms of these licenses (Exhibit 4) include, inter alia, that:
- (a) redistribution of the source code is only allowed with appropriate copyright notices and further compulsory information;
  - (b) trade names and trademarks may not be reproduced without consent of the owners;
  - (c) warranty and liability for such software is excluded; and
  - (d) it is prohibited to reduce the rights of the sub-licensees.

## **11. Liability**

- 11.1 All and any liability of the Parties hereunder (if any) will be limited to damages incurred by gross negligence or wilful intent of the other Party, its employees, agents or subcontractors.
- 11.2 Separate from the above, SWITCH will not be liable for any acts or omissions (including but not limited to instructions, notices and recommendations) of its employees, agents or subcontractors resulting in:
- (a) any delayed addition, modification or deletion of entries in the WAYF-Server;
  - (b) any errors or faults in the registration or distribution of Meta-data;
  - (c) any errors or faults in the SWITCH tools (including but not limited to AAIportal and AAIproxy);
  - (d) any errors or faults in the Shibboleth software or any parts, tools, libraries or derivative products thereof;
  - (e) the AAI Services being not available; and
  - (f) any other damage, whether direct or indirect, exceeding an amount of CHF 1000.-.
- 11.3 To the extent the FEDERATION MEMBER is a Home Organization, it will include in its rules governing the relations to the End User a waiver in form and substance as set forth in Exhibit 5.B.

## 12. Data Protection

- 12.1 Each Party will at all times throughout the term of this Agreement and as may otherwise be necessary, comply with the applicable provisions and obligations imposed by the Swiss Data Protection Acts as well as the applicable legislation of the Swiss Cantons so far as they relate to the Services and to the processing of personal data.
- 12.2 The FEDERATION MEMBER will ensure that appropriate technical and organisational measures are taken against unauthorised or unlawful processing of data and against accidental loss or destruction of, or damage to, this data. It will adhere to any reasonable recommendation made by SWITCH to ensure compliance with the measures described in this Section.
- 12.3 The Parties will, inter alia, (i) comply with the Swiss and EU provisions relating to the transfer of personal data abroad, (ii) comply with and include the EU Standard Contractual Clauses (or such stricter terms as may be required in certain Jurisdictions) into all agreements relevant for or relating to the transfer of data outside of the EU, and (iii) will be prevented from having remote access to personal data from any country but the countries listed hereafter: EU, EEA, Canada, Switzerland or any country subject to an official finding to guarantee an equivalent level of data protection as applicable in the EU, such as the countries of the EU white list issued by the European Commission and the list provided by the Swiss Federal Data Protection Commissioner, as amended from time to time. Any transfer of personal data to the United States may only occur after the Parties have independently verified that the recipient of such data fully complies with the EU Safe Harbour provisions, and where necessary, specific local legal requirements have been fulfilled.
- 12.4 To the extent the FEDERATION MEMBER is a Home Organization, it will include in its rules governing the relations to the End User a Clause governing data protection issues in form and substance as set forth in Exhibit 5.A.

## 13. Term and Termination

- 13.1 This Agreement is entered into for an indefinite term. It can be terminated by either Party by giving 12 months prior notice effective as per the end of a calendar year.
- 13.2 Notwithstanding this, a Party may terminate this Agreement if
- (a) the other Party commits a material breach which is not cured within thirty (30) days after notice reasonably describing such breach, provided that if such other Party works diligently and in good faith to cure such breach in accordance with this provision and such breach is not capable of being cured within thirty (30) days, it may have up to thirty (30) additional days to cure such breach if it demonstrates to the terminating Party's reasonable satisfaction that it is capable of curing such breach within the additional period;
  - (b) additional fees are introduced in accordance with Sec. 6.6, to the extent the FEDERATION MEMBER has opposed the introduction of such additional fees, and provided that the FEDERATION MEMBER has given notice to terminate this Agreement within 30 days of these additional fees becoming effective. The notice period shall be six (6) months. During the notice period, the additional fees shall not be levied from the FEDERATION MEMBER having served the notice to terminate this Agreement.



- (c) if, in a majority of the Federation members' reasonable discretion, it is no longer viable to provide the Services due to (i) a change of circumstances which materially impairs the delivery of the Services; (ii) the failure by SWITCH to obtain additional funding for the Services as per Sec. 6.6 above when such failure has an adverse effect on the ability of SWITCH to perform its overall tasks; or (iii) a material change of applicable laws and regulations;
- (d) if and as entitled to do so pursuant to another Section of this Agreement.

13.3 Upon termination, the FEDERATION MEMBER will return all SWITCH IP and all other documents and software received from SWITCH as part of the Service delivery and will confirm that it has destroyed all copies thereof, subject to mandatory archival duties.

## **14. General Provisions**

- 14.1 This Agreement shall be governed by Swiss law, without reference to conflict of laws principles.
- 14.2 Neither Party will be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, earthquake, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority. If such delaying cause shall continue for more than sixty (60) days, the Party injured by the inability of the other to perform will have the right upon written notice to terminate this Agreement pursuant to Section 13.
- 14.3 Neither Party may assign or delegate this Agreement or any of its rights or duties under this Agreement without the prior written consent of the other; provided, that either Party may assign this Agreement to a person or entity which acquires or succeeds to all or substantially all of its business and assets, and which has assumed in writing its obligations under this Agreement. In addition, SWITCH shall be entitled to assign this Agreement to an Affiliate of SWITCH without the prior consent of the FEDERATION MEMBER.
- 14.4 If any section, paragraph, provision, or clause in this Agreement shall be found or be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the Parties will negotiate, in good faith, a substitute, valid and enforceable provision which most nearly effects the Parties' intent in entering into this Agreement.
- 14.5 The terms and conditions herein contained constitute the entire agreement between the Parties and supersede and terminate all previous agreements and understandings, whether oral or written, between the Parties hereto with respect to the subject matter hereof, including, without limitation, any distribution and related agreements in effect as of the date hereof.
- 14.6 This Agreement may be amended at any time either by mutual written agreement among the Parties or, if the amendment should be valid and binding on all Federation members, by adhering to the following procedure:
  - (a) SWITCH posts the proposed amendment on its dedicated AAI website and informs the Federation members accordingly;

- (b) the members of the Advisory Committee will be consulted and given the opportunity to comment on the proposed changes;
- (c) not later than 30 days from being informed thereof, the members of the Advisory Committee will forward their comments (if any) to SWITCH;
- (d) 60 days after having served the notice on the proposed amendment, SWITCH will send to the FEDERATION MEMBER an amended version of this Agreement which duly takes into account any comments received meanwhile;
- (e) if the FEDERATION MEMBER does not object to such amendment in writing within 30 days after receipt of the amended Agreement, the amendment shall be accepted and binding on the Parties.

14.7 Any notice required or permitted by this Agreement shall be given in writing or by email.

14.8 In case of a dispute, the Parties shall convene and try to resolve such dispute in good faith. If the dispute cannot be resolved within 60 days after it came up, it shall be submitted to a sole arbitrator appointed in accordance with the Swiss Rules of International Arbitration issued by, inter alia, the Chambers of Commerce of Zurich, Geneva, Bern and Basel. The arbitrator shall be appointed by the President by the Zurich Chamber of Commerce and shall have an academic background and a thorough understanding of information technology. The seat of the arbitral tribunal will be Zurich and the language of the proceedings will be German.

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Zurich, .....

SWITCH

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Please add the full names of the signers in printed letters.

**Document management**

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