

## Appendix 1 to the Registrar Agreement

### Interface contract for the registration and administration of domain names under the .ch and .li domain

between

#### **SWITCH**

Werdstrasse 2  
8021 Zurich  
Switzerland

hereinafter **the Registry**

and

#### **Party 2**

Contact  
Street  
Postcode & town  
Country

hereinafter **the Contractual Partner**

#### **Preamble**

The Registry is the registry for domain names under the .ch domain on behalf of the Swiss Federal Office of Communications (OFCOM) and for domain names under the .li domain on behalf of the Office for Communication of the Principality of Liechtenstein. Within this framework it provides the Contractual Partner with an interface for real-time registration of domain names.

In relation to any registrar contract, this interface agreement is an essential component of the registrar contract, i.e. termination of the interface agreement entails termination of the registrar agreement, and the interface agreement terminates at the same time as registrar agreement.

#### **Subject**

The Registry makes available to the Contractual Partner the Extensible Provisioning Protocol EPP (hereinafter the interface) in accordance with the User Manual (Annex 1) for electronic data exchange with the Registry's registration system.

The requirements for requests made by the Contractual Partner across the interface and administrative actions effected through such interfaces, as they concern domain names, are based on the registrar agreement including its Appendices and other contractual components.

## **1. Rights and obligations of the contracting parties**

### **1.1. Rights and obligations of the Contractual Partner**

#### **1.1.1. Implementation obligation**

The Contractual Partner is obliged to install the interface according to Annex 1 within the appropriate deadline unless the interface is already in use on execution of this contract. Otherwise the Registry may terminate this contract with immediate effect as provided for in para. 6.

If Annex 1 provides for a test procedure for the interface to be used by the Contractual Partner, it shall perform this procedure successfully prior to execution of the present contract except in the case in which the interface concerned is not released for use by the Registry until after execution of the contract.

If data exchange across the interface does not properly occur within a reasonable time after installation despite appropriate efforts by both contracting parties, or if the interface does not function correctly in accordance with the applicable user manual, the Registry may terminate this contract with immediate effect as provided for in para. 6.

The Contractual Partner undertakes to implement the application necessary for communication across the interface and in the event of updates to adapt it in accordance with the instructions of the Registry in its user manual. The relevant costs incurred by the Contractual Partner shall be borne by the Contractual Partner.

The costs incurred by the Contracting Partner in connection with the installation and use of the interface, including any test procedures specified in Annex 1, shall be borne by the Contracting Partner.

#### **1.1.2. Permissible use of the interface**

The Contracting Partner may use the interface solely for data exchange, in particular for requesting and undertaking administrative actions (in so far as the Contractual Partner is entitled to do so) in connection with the registration and administration of domain names in accordance with the registrar agreement and its appendices and other contractual components concluded between the Registry and the Contractual Partner.

For data queries as to whether a domain name is free, the Registry makes available appropriate domain name query systems. Data queries relating to synchronisation of the Contractual Partner's dataset with that of the Registry concerning the Contractual Partner's end customers must be agreed beforehand with the Registry. Otherwise the Registry may take measures as defined in para. 2.1.4.

The EPP interface allows extensive data queries and, for the registrars, it replaces the Registry's Whois service. However, if it is not a matter of contact persons in connection with domain names for which a registrar is entered as the registrar contact, the same rules apply to the content and extent of the permissible use of the EPP interface as to the use of the Whois service in accordance with the terms of use for the version of the Registry's Whois service and domain name search published at [www.nic.ch](http://www.nic.ch).

The Contractual Partner takes appropriate measures to ensure that the only employees to receive access to data across the interface are those who require this for their activity within the Contractual Partner's organisation and within the framework of permissible use of the interface.

The Registry is entitled at any time to impose directives concerning the use of interface; these must be complied with immediate effect by the Contractual Partner.

### **1.1.3. Impermissible use**

The Contractual Partner shall not use the interface for further purposes or purposes other than those mentioned in para. 2.1.2 above, regardless of whether such impermissible use takes place intentionally or negligently. In particular, forwarding of, granting access to and otherwise making accessible to third parties data acquired as a result of impermissible use is prohibited.

In particular, but not exclusively, use of the interface for the following purposes is impermissible:

- purposes of the trade in address data,
- advertising purposes of any kind,
- marketing or product research,
- messages which inconvenience or aggrieve holders of domain names or other contact persons registered in connection with domain names (spam, threats, etc.),
- registration of multiple domain names and deletion of the same within the "grace period" allowed according to para. 2.4 of the domain name registration contract (so-called domain tasting),
- data queries not approved by the Registry for purposes of synchronisation of a dataset as defined in para. 2.1.2 above and other general queries concerning the Registry's database, and
- other purposes which involve a risk to the reputation of the Registry or which might lead to congestion of the registration system or which constitute the elements of a crime (e.g. phishing fraud, identity theft, etc.).

In particular, the risk of damage to the Registry's reputation is always present if the occurrence of impermissible use of the interface by the Contractual Partner with regard to third parties, in particular in the media, becomes known or leads to congestion of the Registry's registration system.

#### **1.1.4. Measures in the event of impermissible use**

If an impermissible use occurs, the Registry may issue a warning to the Contractual Partner and/or limit the availability of the interface to the Contractual Partner without prior notice. In serious cases or in the event of a recurrence, the Registry may terminate this contract with immediate effect in accordance with Section 6, para. 2 letter a. In this case, the Registry reserves the right to claim damages.

The Registry's database is protected under copyright law and laws against unfair competition (art. 4 Copyright Law and art. 5 Law on Unfair Competition). Any misuse in connection with the database will be punished. If a violation of the law has taken place, the Contractual Partner shall pay the Registry a non-liberatory contractual penalty of CHF 50,000.00 for each case. The Registry reserves the right to claim further damages and to terminate this contract with immediate effect.

#### **1.1.5. Confidentiality**

The information and data which becomes known to the Contractual Partner in connection with this contract must be treated confidentially. In particular, the Contractual Partner is not permitted to forward and make accessible confidential information and data to third parties. This applies in particular to passwords for access to the interface and the Registry's hotline telephone numbers.

#### **1.1.6. Contact/DNSSEC**

The Contractual Partner's contact information and confirmation that the Contractual Partner supports DNSSEC signed domain names is given in the registrar agreement. Any changes in the contact data shall be communicated to the Registry in writing within the appropriate period (cf. also Section 6 para. 1 letter d below).

### **1.2. Rights and obligations of the Registry**

#### **1.2.1. Equal treatment / first-come, first-served.**

The Registry treats all interface users equally and ensures transparent and non-discriminatory assignment of domain names on the first-come, first-served principle. Registration of a domain name for which multiple valid requests are received takes place in chronological order (first-come, first-served) of registration by the Registry's system, to which its website and its other registration interfaces point.

#### **1.2.2. No guarantee of availability**

With regard to the provision of its services as a registry and based on the legal requirements, the Registry applies appropriate care which may be expected of it in view of the large number of requests to be handled.

On a monthly basis, the Registry will establish a service window for the performance of service and maintenance work; the Registry will inform the Contractual Partner reasonably in advance, whenever possible. For the duration of the service window, the Registry may if necessary restrict or totally interrupt the use of the interface.

The Registry attempts to provide its services in connection with the interface and its services in the best way reasonably possible, but does not guarantee the availability of interfaces and services.

The Registry may restrict the availability of the interface without prior notice if the Contractual Partner uses the interface impermissibly as defined in Section 2.1.3. In addition, the Registry may restrict availability without prior notice as an emergency measure to protect the rights and obligations of the Registry if operation of the registration system so requires. In particular, this is the case if a restriction is necessary so that the same rights can be assured for all in terms of equal treatment of all registrars. The Registry will subsequently inform the Contractual Partner appropriately.

### **1.2.3. Contact**

The Registry's contact information is given in Appendix 2 of the registrar agreement. Any changes in the contact data shall be communicated to the Contractual Partner in writing within the appropriate period (cf. also Section 6 para. 1 letter d below).

### **1.2.4. Obligation of information**

The Registry informs the Contractual Partner reasonably in advance of any changes to the user manual (Annex 1) or the interface and allows appropriate periods for implementing the adaptations.

## **2. Liability**

In connection with the present contract, the Registry is liable for damages caused by wilful intent or gross negligence. The Registry shall not be liable for any other damages. This applies in particular to the following damages and defaults:

1. damages caused or partially caused by the fact that the Contractual Partner does not comply with the conditions of this contract, its Annexes and/or the registrar agreement and its contractual components,
2. damages caused by downtime, interruptions in operation, power failure, faults such as denial-of-service attacks and other hacker attacks, sabotage, terrorism, vandalism and fluctuations in performance, etc. in connection with telecommunication networks and/or the internet and/or in connection with the programmes used by the Contractual Partner and third parties for using the internet.
3. indirect, collateral or consequential damages, such as loss of profit, unrealised savings or third-party claims,

regardless of whether based on contract, tort or on some other action; this also applies if the Registry has been informed of the possibility of such damages. In all cases, the Registry reserves the right to invoke contributory negligence on the part of the aggrieved party. Any compensation obligation of the Registry, its employees, its organisations and any third parties contracted by the Registry is limited in any event to a maximum amount of CHF 500.00 per case of damage in so far as legally permissible and regardless of the legal basis.

### **3. Transfer of this contract**

The transfer of rights and obligations under this contract requires a registrar agreement to exist, so that transfer is not possible without the prior written consent of the Registry. The Registry shall not refuse such consent without good and valid reason, in particular where the requirements under the registrar agreement are met. This will not affect a change of registrar in relation to individual domain names.

### **4. Ordinary termination of the contract**

This contract is entered into for an indefinite term. It may be terminated by either party at the end of any month subject to serving one month's prior notice. To be valid, the notice must be given in writing.

### **5. Extraordinary termination of the contract**

This contract may be terminated by a written declaration of one contracting party with immediate effect if:

- a) bankruptcy proceedings are initiated relating to the other contracting party or the application for initiation of bankruptcy proceedings has been made by the contracting party against itself;
- b) if the other contracting party makes an application for a bankruptcy protection or if composition proceedings are initiated;
- c) if the other contracting party goes into liquidation;
- d) if the other contracting party can no longer be reached via the contact details communicated in this contract and no update has been carried out in accordance with Section 2.1.6 or 2.2.3 respectively.

Moreover, this contract may be terminated by a written notice of the Registry with immediate effect if:

- a) despite a prior reminder from the Registry, the Contractual Partner has not installed the interface within the period following execution of the contract or if data exchange is not functioning within the period after installation in accordance with the specifications in the applicable user manual;
- b) the Contractual Partner uses the interface impermissibly as defined in Section 2.1.3 above;
- c) another material breach of the contract by the Contractual Partner occurs;
- d) the interface is not used by the Contractual Partner for more than 12 months or no valid requests are made or other administrative actions taken by the Contractual Partner.

This contract shall terminate automatically in the event of termination of the registrar agreement concluded between the Registry and the Contractual Partner, irrespective of the legal grounds for such termination.

### **6. Consequences of termination of this contract**

With the termination of this contract, use of the interface by the Contractual Partner will be prevented by technical means. All data which the Contracting Partner has acquired across the interface and which are not absolutely essential for user support must be deleted by the Contractual Partner. A written, legally valid, signed confirmation of deletion must be supplied to the Registry by the Contractual Partner within 5 working days of termination of the contract without a prior request being required.

## **7. Severability**

In the event that any provision of this contract or parts thereof are or become invalid or void, the remainder of the contract shall not be impaired or otherwise affected by this and the invalid or legally void provision shall be replaced with a valid provision which will achieve, to the extent possible, the original economic purpose of the void provision.

## **8. Applicable law and jurisdiction**

This contract is governed by and construed in accordance with Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. For all and any disputes arising from or in connection with this contract, the courts of Zurich shall have exclusive jurisdiction.

Place, date:

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Signatures [...]

**Annex 1: Definition of the interface with user manual**

**Annex 2: Extract from the commercial register (max. 3 months old)**