

Agreement concerning the Test Use of SWITCH's EPP Interface

between

SWITCH
Werdstrasse 2
CH-8021 Zurich

and

[Contracting Party]
[Contact]
[Street Number]
[Postcode, City]
[with Registrar-User-ID (...)]

hereinafter "Test User"

together "Parties"

1 Starting Point

On behalf of the Swiss Federal Office of Communications (OFCOM), SWITCH is the registry for domain names under the domain ".ch", and on behalf of the Office of Communications of the Principality of Liechtenstein for domain names under the domain ".li". In this context, SWITCH provides the registrars with an interface for the real-time registration of domain names. The registrar is required to control the hardware and software as well as the technical processes needed in connection with the registration and administration of domain names. In order to ensure this, each registrar must undergo and pass a test procedure.

The subject matter of the present agreement is the test use of the Extensible Provisioning Protocol Interface (hereinafter "EPP Interface") for the test registration system of SWITCH in order to verify that the Test User technically masters the exchange of data via the EPP Interface.

In principle, the test registration system and the operational system are functionally identical. Systemic restrictions or restrictions for data protection reasons remain reserved.

2 Elements of this Agreement and Precedence

The relevant contractual documents are:

- This agreement and
- the EPP User Manual in its currently valid version.

By signing this agreement, the Test User accepts the EPP User Manual as part of this agreement.

In case of discrepancies, this agreement shall take precedence over the EPP User Manual.

3 Rights and Obligations of SWITCH

3.1 Access to the Test Registration System

SWITCH shall provide access to its test registration system by assigning the Test User a maximum of two user accounts (with user-ID and password as well as IP address recognition). Said user accounts shall be opened at such time as is to be determined by SWITCH in consultation with the Test User, taking into account SWITCH's other work commitments. SWITCH reserves the right to impose restrictions at any time with regard to the Test User's access, in particular to limit the bandwidth, where SWITCH deems this necessary for operational reasons.

3.2 Contact Person

SWITCH shall designate a contact person to take receipt of all requests of the Test User in connection with the present agreement.

4 Rights and Obligations of the Test User

4.1 Access to the Test Registration System

The Test User will be given the opportunity, with respect to testing of the EPP Interface and limited to the test registration system, to assume the role of a registrar by being able to register, delete, manage and transfer domain names in the test registration system via the two user accounts opened for it. The requests made in this regard by the Test User and the changes made by it shall have no effect on SWITCH's operational system. The Test User's authorization with respect to the test registration system shall be carried out via user account and IP authentication.

The user accounts and the corresponding IP addresses shall be blocked for accessing SWITCH's test registration system upon termination of this agreement (paras. 7.2 and 7.3), provided that no registrar agreement for domain names is subsequently entered into under the ccTLD (country code Top-Level-Domain) ".ch" and ".li".

4.2 Data and Confidentiality

The data in the test database are similar to the data in the real database, but are not required to correspond to the actual data. Nevertheless, the Test User may make queries, in the same way these can be made on SWITCH's productive registration system, although no automatic limitation of the number of queries is implemented. Nevertheless, the Test User is not allowed to query data in large quantities. If SWITCH detects such misuse by the Test User, SWITCH shall be entitled to invoke extraordinary termination of this agreement in accordance with para. 7.3 and to claim any damages suffered.

The Test User undertakes to keep confidential all access codes and data exchanged between the Parties and to take all reasonable and possible data protection measures.

The Test User further undertakes to delete all and any data that it became aware of through the use of the test database, e.g. data concerning the owners of domain names and/or other contact persons following completion of the test, or at the latest upon termination of the present agreement, and to do this without being asked and irrevocably.

4.3 Unauthorised Use of Data

The Test User is prohibited from using the EPP Interface and any data exchanged therewith for other or more far-reaching purposes than those set out in paras. 4.1 and 4.2 above, irrespective of whether such unauthorised use is intentional or due to negligence. In particular, the Test User is prohibited from transferring, granting access to or any other form of making available the data acquired through the use of the EPP Interface to third parties.

In particular, the Test User is also not permitted to use the EPP Interface and/or the data acquired by the Test User in this connection for:

- the purpose of trading in addresses;
- any promotional purposes whatsoever;
- marketing or product research;
- harassing or harmful messages (spam, threats, etc.) to the owners of domain names or other contact persons registered in connection with domain names;
- data queries not authorised by SWITCH in order to synchronise the Test User's database on domain name owners with that of SWITCH, and other general queries with respect to SWITCH's test database; and
- other purposes that risk harming SWITCH's reputation or that constitute or could constitute a criminal offence (e.g. fraud via phishing, identity theft, etc.).

The risk of harming SWITCH's reputation is in particular always present when the circumstances of unauthorised use of the EPP Interface by the Test User are known to third parties, particularly to the media.

If an unauthorised use as defined in para. 4.3 is identified by SWITCH, SWITCH shall be entitled to invoke extraordinary termination of this agreement in accordance with para. 7.3 and to claim any damages suffered.

4.4 Unauthorised Use of the EPP Interface

The Test User undertakes not to use the EPP Interface in any way that jeopardises or could jeopardise the stability of SWITCH's system, neither in relation to the type nor the scope of the use. Furthermore, the Test User undertakes to program its client software in such a way that the latter cannot be used for unauthorised use of the EPP Interface within the meaning described above. This applies in particular with respect to an abusive or disruptive use of the EPP Interface (such as for a Denial of Service – DoS). In the event of a breach of this para. 4.4 by the Test User, SWITCH reserves the right to invoke extraordinary termination of the present agreement in accordance with para. 7.3 and to claim any damages suffered.

4.5 Contact Person

The responsible contact person on the part of the Test User for all enquiries by SWITCH in connection with this agreement shall be:

[First name, Surname]

[Company name]

[Street]

[Post code, City]

[Country]

Email: [...]

Tel: [...]

4.6 SWITCH's Business Name and Trademarks

The Test User is prohibited from marketing its software as tested by, with or at SWITCH. Any mention or depiction of the name and/or the trademark of SWITCH in this regard is prohibited. Any breach hereof requires the Test User to remove this mention or depiction, irrespective of how it is performed (e.g. naming as a reference, SWITCH-Approved) at SWITCH's first request, and to pay a contractual penalty of CHF 50,000.00, the payment of which shall not relieve it from the obligation to remove the mention or depiction. SWITCH reserves the right to claim damages.

5 Warranty

SWITCH provides no warranty whatsoever that the EPP Interface is free from any defects and/or is fully functional for the duration of this agreement.

6 Liability

The Test User shall be liable for any damages suffered by SWITCH culpably caused by the Test User, its employees and/or any third parties contracted by it in connection with the present agreement.

7 Effective Date, Duration and Extraordinary Termination of Agreement

7.1 Effective Date

The present agreement shall enter into force upon signature by the Parties.

7.2 Duration

The present agreement shall be valid for six months from the date of signature by the Parties. A new agreement with SWITCH must be concluded for any subsequent use of the EPP Interface.

7.3 Extraordinary Termination of Agreement

SWITCH may terminate the present agreement with immediate effect and block access to the EPP Interface in the event that the Test User acts in breach hereof. Where SWITCH invokes extraordinary termination of the agreement, the Test User must pay a contractual penalty of CHF 50,000.00, the payment of which shall not invalidate the extraordinary termination of the agreement. This notwithstanding the right to claim damages.

8 Final Provisions

8.1 Severability

If individual provisions of this agreement should be invalid or incomplete or if performance should become impossible, this shall not affect the validity of the remaining parts of the agreement.

8.2 Amendments

Amendments to the present agreement may only be made in writing, including any waiver of the formal requirement of the written form.

8.3 Assignment of Rights and Obligations

The assignment of rights and obligations under the present agreement is not permitted.

8.4 General Terms and Conditions of the Test User

Any general terms and conditions of the Test User shall not apply to the present agreement.

8.5 Applicable Law and Jurisdiction

With respect to the present agreement between SWITCH and the Test User, the substantive law of Switzerland shall be exclusively applicable, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction shall be Zurich.

Appendix: EPP User Manual

Zurich,

SWITCH

Nicola Wirczakowski

Marcel Hofmann

Test User

Place, Date

Place, Date

[First name, Surname]

[First name, Surname]