Service Description for the Registration and Administration of Domain Names by Swisscom

1 Area of application

This Service Description govern the conditions for the registration, administration, and use of domain names under the domains ".ch", ".li", ".com", ".net", ".org", ".biz" and ".net", as well as the legal relationship between Swisscom (Switzerland) Ltd (in the following, "Swisscom") and the customer (in the following, also the "Holder") that avails itself of domain registration and domain parking services (in the following, the "Services").

The information provided on the website about the Services is non-binding and subject to change. The customer selects the Service to be provided by Swisscom from the portfolio of services available at the time of use and sends its legally binding order to Swisscom.

By submitting a request for registration of a domain name or for transfer of same to Swisscom, the customer accepts the terms and conditions of this Service Description.

2 Integral parts of the contract

The integral parts of the domain name registration contract are
a) this Service Description
b) the current Swisscom price overview for domain names
(http://www.swisscom.ch/sme/it_hosting/webhosting/uebersicht/index.htm).
c) the rules of procedure for the dispute resolution service, as amended, stipulated by Switch and Melbourne IT (www.nic.ch and www.melbourneit.com.au/policies/index).

In addition, all basic regulatory conditions are applicable to the claimed domain name under the domains .ch/ .li/ .com/ .net/ .org/ .biz and .info. The customer is responsible for obtaining information about these.

3 Registration and administration of domain names by Swisscom

3.1 General

At the customer's request, Swisscom will undertake the registration of
- ..ch and .li domain names with the Swiss registry Switch.
- ..com/ .net/ .org/ .biz and .info domain names with the Australian registry Melbourne IT.

The customer must comply with the relevant registry's requirements pertaining to the spelling of and the number of characters in the domain, as well as implement corresponding instructions.

Registration of a domain name for which several valid requests have been submitted will be based on the chronological order in which they are received (first come, first served).

The Holder of a domain name can be a natural or legal person having a residence in Switzerland.

Each registration will be made on behalf of and for the account of Swisscom. The costs will be charged to the customer.

3.2 Domain parking

The domain parking Service enables the customer to retain all domains registered by Swisscom despite cancellation of the web hosting contract with Swisscom (see Web Hosting Service Description).

This is comprised of the following Swisscom services:

- Maintenance and renewal of the registration contract for the corresponding domain on behalf of and for the account of Swisscom, and
- Access by the customer to the Customer Center account for the purposes of administration and requesting of contact information.

3.3 Refusal of registration

Registration will be refused if the applied-for domain name is identical to a domain name that has already been registered, to a domain name in a registration request submitted earlier and still being processed, or to one in the transition period. It will also be refused if the domain name is reserved for a governmental authority.

Moreover, Swisscom may refuse registration if
- important technical reasons or compliance with international standards require it;
- the ability to pay is in doubt, in particular, if the future holder designated in the request is insolvent, is in default of bill payments for domain names already assigned, or does not pay the advance that Swisscom may request for the assignment of domain names for amounts in excess of CHF 500.00;
- there is an evident risk that Swisscom could make itself legally liable due to the registration of the domain name;
- the applicant cannot be contacted for queries or does not reply within 10 days.

Notification of refusal of a registration of a domain name will generally be given within 10 working days from receipt of the request. With the refusal of registration, the request in question lapses and the relevant domain name becomes available.

3.4 Revocation of registration

Swisscom can revoke the registration of domain names if:
- the Holder breaches the applicable law;
- the Holder breaches the contractual relationship with Swisscom and does not cure the breach by a deadline set by Swisscom;

- fees are not paid in accordance with the contract;
- the Holder breaches its duty to keep its personal data up-to-date;
- there is an evident risk that Swisscom could make itself legally liable due to the registration and/or use of the domain name;
- the Holder has died or has been deleted from the commercial register as a result of bankruptcy or liquidation;
- other important reasons require it.

With revocation, the domain name is deleted from the respective databases. With deletion, the domain name becomes available for re-registration after a transition period.

3.5 Transfer and assignment

Following registration, the customer is considered to be the Holder of the domain name, and the customer alone is liable for its use. The Holder has the right to transfer the domain name to another partner or directly to the registry, provided all due fees have been paid.

At the request of the customer (the Holder), Swisscom will also transfer a domain name that has already been registered to the customer and is being administered by Swisscom to a third party.

To do so, the Holder must submit a written request to Swisscom. If a third party makes a request for the transfer of a domain name, this will take place only after confirmation by the Holder.

In addition, Swisscom will transfer a domain name from the Holder to a third party if it is presented with a decision of a court or arbitral tribunal enforceable in Switzerland, a decision of a Swiss criminal prosecution, administrative, or regulatory authority enforceable in Switzerland, an expert's decision of a mandatory dispute resolution service, a settlement concluded in or out of court by both parties, or a writing, according to which Swisscom, without being a party to the corresponding proceedings, is directly instructed to transfer the domain name to the third party or in which the consent to the transfer to be given by the Holder is contained or by which such consent is replaced. Deletion through revocation will occur in place of transfer if such instruction takes the place of transfer in one of the aforementioned documents. In all cases, the third party must submit a certificate of the enforceability of the decision.

3.6   Lawfulness

A request for registration of a domain name represents to Swisscom the binding warranty of the customer making the request that it is entitled to register the domain name. The customer warrants that the request is being made lawfully, i.e. that the selected domain name does not infringe any right (e.g. trademark rights) and also is not *contra bonos mores*. Swisscom is not obligated to check the customer's entitlement to register a domain name.

The customer is fully liable to Swisscom for any third-party claims related to unlawful registration or transfer of domain names. If there is a specific indication or justified suspicion that the customer is not entitled to register or transfer a domain name, Swisscom reserves the right to refuse to provide the corresponding Service from the outset.

3.6 Blocking and other measures

In the event it receives one of the documents mentioned in Section 3.5, Swisscom is likewise entitled to block the transfer of a domain name temporarily, i.e. to block the transfer of a domain name to a new holder at least until further notice, without Swisscom being a party to the corresponding proceedings.

In addition to or instead of blocking, the aforementioned authorities may also order that the name server assignments for the domain names concerned be deleted. Other measures ordered by all authorities remain reserved.

If Swisscom determines that the customer has misused its Services or used data and information in an unauthorised manner, then Swisscom is entitled, including without prior notice, to suspend its services until such time as the lawful condition has been restored or to delete the name server assignment to a domain name and block it for a certain period of time.

4 Customer's obligation to cooperate

4.1 Duty to provide truthful information – Duty to maintain data

When ordering and using the Services, the customer is obligated to provide truthful information to Swisscom.

A valid request for registration of a domain name must contain up-to-date, complete, and correct information about the Holder, the indicated contacts, and the name servers. Only the Holder is entitled to delete the name server or to change the IP address.

In addition, the customer is responsible for ensuring that all customer data recorded pursuant to the order (in particular, main representative and other contacts) are kept up-to-date, complete, and correct for the entire term of the registration. For Swisscom, only the respective data registered in the database are authoritative. Swisscom is not obliged to take note of data communicated other than via the order or to itself conduct research into the accuracy of these data. If the data prove to be incomplete, inaccurate, or not up-to-date and the customer fails to correct same within 10 calendar days of having been required by Swisscom to do so, or if the identity of the customer cannot be determined, or if messages from Swisscom are undeliverable, Swisscom is entitled to revoke this customer's domain name and to terminate the contract.

The Holder is responsible for ensuring that with regard to personal data listed in the request for registration or in connection with the administration of the domain name, the persons concerned have given their consent to disclosure to and processing by Swisscom and its partners.

4.2 Duty of verification

The customer undertakes to verify the correctness of Swisscom messages and processed requests within 14 days. If the customer fails to so verify, it forfeits any possible liability and other claims against Swisscom in connection with any possible errors in the respective messages.

4.3 Passwords

The passwords provided by Swisscom to the customer or to the main representative designated by the customer, as well as other identification parameters, are intended for personal use by the customer and are to be kept confidential. The customer itself is fully liable for the use of passwords and identification parameters.

4.4 Dispute resolution proceedings

Neither the registries used by Swisscom nor Swisscom itself will judge who may have a better right to use the domain name, whether at the time of registration or thereafter. Likewise, neither will review content placed on websites.

If the parties cannot agree on the entitlement to a domain name or on the lawfulness of its use, each registry will make a mandatory dispute resolution service available to them, for which costs are payable (www.nic.ch and www.melbourneit.com.au/policies/index). Any decisions made by the relevant dispute resolution service are binding on the customer (the Holder) even if it does not proceed to the merits in the dispute resolution proceedings.

The dispute resolution proceedings are subject to the relevant rules of procedure in the version currently in effect. In any case, litigation in court is reserved for both the Holder and third parties.

5 Billing

Swisscom will bill the customer the costs for registration, domain parking, and transfer in accordance with the price list in effect at the time.

Swisscom normally will bill the customer for the selected contract term in advance. The bill must be paid on or before the due date set forth in the billing statement. The setting off of reciprocal claims of the contracting partners is precluded.

If the customer has not paid the bill by the due date, it will thereupon deemed to be in default, and Swisscom may, to the extent permitted by law, suspend its service provision for all Services, take additional measures to prevent further damage, and/or terminate the contract without notice and without paying any compensation. The customer bears all costs incurred by Swisscom as a result of payment default. In particular, the customer will owe Swisscom default interest of 5%, as well as a fee of CHF 20.00 for each payment reminder notice. In the event of debt collection by third parties, the customer will owe additional fees for their collection efforts.

6 Guarantee

Swisscom guarantees that the Service will be provided in a technically correct manner and with due care. Swisscom will make every effort to have incoming requests registered as soon as possible. Beyond that,

Swisscom does not give any guarantee as to the availability and error-free nature of the Services and systems of Swisscom and of third parties collaborating with Swisscom (in particular, registries).

7 Liability

7.1 Liability of Swisscom

Swisscom is not liable for any damages, except those caused by wilful misconduct or gross negligence.

In particular, Swisscom is not liable for:
- damages and disruptions in service caused by failure by the Holder or a contact person to comply with a contractual provision;
- damages and disruptions in service caused as a result of use outages, interruptions of operation, power failures, various attacks, and the like in connection with telecommunications networks and/or the Internet and/or in connection with software employed by the Holder or third parties for using the Internet;
- indirect or consequential damages, such as lost profit, unrealised savings, and third-party claims;
- loss of data;
- costs and damages incurred by the customer in connection with compliance with an expert's decision in the dispute resolution proceedings;
- damages from misspellings by the customer or transmission errors, as well as incorrect registrations or transfers resulting from same;
- untimely registrations or transfers;
- unlawful registration or transfer of the domain name by the customer (e.g. in the nature of trademark infringements by the registered domain name, etc.);
- execution of unauthorised changes or requests by Swisscom, insofar as unauthorised third parties became aware of the password due to its being safeguarded and handled or made accessible without the requisite due care.

The customer is not in a contractual relationship with the registries, meaning that they are not liable to the customer in any way.

7.2 Liability of the customer

The customer undertakes to indemnify Swisscom against all third-party claims *lodged against Swisscom under or in connection with unlawful registration and/or use of a domain name* (e.g. infringement of trademark rights, violation of the Act on Unfair Competition [*Unlauterer-Wettbewerbs-Gesetz*, UWG]). The damages to be indemnified also cover the costs for expert legal representation of Swisscom. The customer undertakes to provide Swisscom and third parties engaged by it with assistance in any proceedings. The Holder of the domain name is responsible for the actions and/or omissions of third parties engaged by it to the same extent as for its own conduct, and it is liable to Swisscom for same.

8. Data protection

8.1 General

Swisscom will comply with applicable regulations when handling data, in particular, the Telecommunications Act and the Data Protection Act.

Swisscom will only collect, store and process the personal data of contact persons as may be required for the provision of Services, the finalisation and maintenance of the customer relationship, namely the guaranteeing of a high level of Service quality, for the security of operations and infrastructure, as well as for billing. The customer agrees that Swisscom
> may obtain information regarding the customer in connection with the conclusion and finalisation of the contract and disclose data relating to the customer's payment behaviour.
> may disclose the customer's data to third parties for debt collection purposes
> may process the customer's data for marketing purposes, namely for the organisation and development of its Services as needed and for customised offers, and that the customer's data may be processed for the same purposes within the Swisscom Group. The customer may restrict or prohibit the use of its data for marketing purposes.
> may disclose the personal data of contact persons to foreign and domestic authorities in connection with civil, administrative, and criminal proceedings.

Swisscom hereby notifies the customer that for legal reasons, the following data must be publicised on the Internet and made accessible to third parties:
- designation of the registered domain name;
- full name of the Holder of the domain name;
- complete address of the Holder (including email address);
- if the Holder of the domain name is a legal person or a general or limited partnership, the names of the natural persons entrusted with representing same;
- complete address of the technical contact (including e-mail address);
- controlling language for the contract for registration of a domain name;
- the date of registration of the relevant domain name and the date of the most recent change to such registration;
- IP address of the activated DNS server, and
- information as to whether a domain name is secured with DNSSEC.

8.2 Service provision jointly with third parties

If a Service is provided by Swisscom together with a third party, Swisscom may disclose data about the customer to third parties to the extent this is required for the provision of such Services.

8.3 Right of information

All contact persons have the right to information about data concerning them that is stored in the data bases and to have same corrected.

The customer consents that Swisscom may, upon request, disclose correspondence, receipts, documents, and log files to the registry for a period of 10 years following the ending of the contractual relationship.

9 Confidentiality

Swisscom and the customer undertake to maintain confidentiality with respect to all information and data that is not publicly available to which they may have access while preparing and carrying out this contract. This obligation survives the ending of the contract for as long as there is a justified interest therein.

10 Termination / Deletion

10.1 General

The registration contract between Swisscom and the customer is effective for the subscription period specified in the customer's order. The contract may be terminated by either party with written notice of 30 days, effective at the end of the agreed subscription period. Absent termination with timely notice, the contract automatically renews for the agreed subscription period.

10.2 Termination of web hosting

In the event Swisscom has registered a domain for the customer (.ch/ .li/ .com/ .net/ .org/ .biz/ .info), the customer must, when terminating the web hosting contract with Swisscom, expressly state whether Swisscom should continue to register the relevant domain at the customer's expense or instead terminate on the next possible termination date.

In the event that Swisscom continues to register a domain at the customer's request, the contract between Swisscom and the customer continues in effect within the scope of the domain parking Service (see Section 3.2), and the customer undertakes to pay the fees incurred for this service until termination of the corresponding contract.

If the customer provides no information, Swisscom is entitled to terminate the corresponding domain on the next possible termination date pursuant to the contract terms of the corresponding registry. The customer is solely responsible for finding a registry for its domain or for concluding a corresponding contract directly with the current registry in a timely manner, i.e. prior to expiry of the registration.

10.3 Deletion during the subscription period

If the Holder requests deletion of the domain name prior to expiry of the subscription period then in effect, the customer has no claim to pro-rata reimbursement of fees. With the waiver, the domain name is deleted from the relevant data bases. With deletion, the domain name becomes available for re-registration after a transition period.

10.4   Termination by Swisscom

Swisscom is entitled to terminate the contract without notice if the customer breaches contractual provisions or misuses the Services for unlawful purposes. In such cases, the customer owes Swisscom the fees due through regular expiry of the contract, as well as compensation for all additional costs incurred in connection with termination of the contract without notice.

Moreover, Swisscom can terminate the contract with the customer if bankruptcy or insolvency proceedings are initiated against the customer or if it otherwise becomes apparent that the customer is no longer able to meet its payment obligations and does not advance costs or provide corresponding security for the next contract term prior to expiry of the contract term.

10.5   Release of domain – Transition period

If all Services have been paid, the customer may transfer the domain name to a different registry. The customer (the Holder) is solely responsible for transferring the domain name to a different registry.

Once termination of the registration Service becomes effective, the domain name is released for re-registration.

After a domain name has been deleted, it becomes subject to a transition period in accordance with the rules of the relevant registry, during which period a third party cannot register this domain name. Under certain circumstances, the original Holder can have this domain name registered again, but the Holder has no claim to same.

11   Changes

11.1   Changes to contract conditions

Swisscom will make every effort to maintain its infrastructure at the current standard. The customer acknowledges that new technical developments, security requirements, and/or changes in the portfolio of services of Swisscom contract partners, in particular registries, or to open-source software used by Swisscom can result in an expansion or limitation of the portfolio of services, as well as have an impact on prices.

Swisscom reserves the right to adjust its prices and Services at any time. Swisscom will inform the customer of any changes in a suitable manner. However, no pro-rata fee adjustment will be made during the subscription period then in effect. Price adjustments as a result of a change in the tax rates (e.g. if VAT is increased) as well as any price increases by third-party providers (in particular, registration entities) are not deemed to be price increases and do not permit termination. Should Swisscom significantly change a Service purchased by the customer to the customer's detriment, the latter may terminate the affected Service prematurely without any financial consequences until such time as the change takes effect. Should the customer fail to do so, the changes are deemed accepted.

11.2   Changes to the Service Description

Swiss likewise reserve the right to adjust this Service Description at any time. Swisscom will inform customers in a suitable manner in advance of any significant changes. Should the changes be to the customer's detriment, it may terminate the contract with Swisscom prematurely without any financial consequences until such time as the change takes effect. Should the customer fail to do so, the changes are deemed accepted.

12   Transfer

Swisscom is entitled to transfer the contract with the customer, together with the rights and obligations thereunder, without the latter's consent to BAKOM or a third party, which then assumes the tasks and obligations under this contract.

13   Place of jurisdiction and applicable law

For all .ch und .li domain names, this contract is subject to Swiss law.
The place of jurisdiction is Berne. Other courts may have jurisdiction under mandatory law.

For the remaining domain names (.com/ .net/ .org/ .biz/ .info), this contract is subject to Swiss law, unless the provisions of the registry Melbourne IT prescribe a different law. The place of jurisdiction is Berne, unless the provisions of Melbourne IT prescribe a different place of jurisdiction.