

## CXDA .cx ccTLD | REGISTRANT AGREEMENT

Monday, 5 August 2019

This **REGISTRANT AGREEMENT** (the "Agreement") is entered into, by and between the .cx domain name registrant ("Registrant") and Christmas Island Domain Administration Limited ("CXDA"). Additional agreements, if any, may be entered into between the Registrant and registrars relating to services provided by such registrars, provided that no such additional agreement may waive, alter, or supersede any provision of this Agreement. If there is any conflict between such additional agreements and this Agreement, this Agreement shall control.

### TERMS AND CONDITIONS:

1. *By applying to register* one or more .cx domain names (the ".cx Domain name(s)") with an registrar in the .cx TLD (hereinafter referred to as an "Application") or by using one or more .cx Domain name(s), the Registrant acknowledges that it has read and agrees to be bound by all terms and conditions of this Agreement as well as the following documents, policies, and agreements which are incorporated into this Agreement by this reference and which shall hereinafter (together with this Agreement) be referred to as the "CXDA Policies":

The CXDA Acceptable Use Policy ("AUP")  
The CXDA Privacy Policy  
The CXDA Complaint Resolution Service

Other CXDA rules or policies that are now, or may in the future, be published by CXDA.

The CXDA Policies apply to all domains and sub-level domains which end in the suffix .cx and explain the rights and obligations between CXDA and the Registrant. Those parts of the CXDA Policies, which are not part of the text of this Agreement, are incorporated into this Agreement by this reference. CXDA may accept the Application by facilitating registration and resolution of the .cx Domain name(s); such acceptance shall be deemed to have occurred at the CXDA's principal place of business on Christmas Island.

CXDA may modify the CXDA Policies from time to time. CXDA shall post (publish on or link to) the CXDA Policies on CXDA's web site. Revised CXDA Policies become effective thirty (30) calendar days after posting. CXDA may inform registrants of changes to CXDA Policies via email and the Registrant agrees that such email shall not be considered spam; however, CXDA shall not be obligated to provide such notice via email. The Registrant's use of the .cx Domain name(s) following the effective date constitutes the Registrant's acceptance of the revised CXDA Policies. In the event that the Registrant does not wish to be bound by the revised CXDA Policies, the Registrant's sole remedy is to cancel the registration of the .cx Domain name(s), following the appropriate CXDA Policies regarding such cancellation.

2. *Registration Fee.* The Registrant shall pay to an registrar the appropriate registration fee ("Registration Fee") applicable at the time the Registrant submits its Application to such registrar. Payment of Registration Fees shall be made in accordance with the requirements of the registrars and CXDA policies that are effective at the time the Registrant submits such payment. All Registration Fees paid pursuant to this Agreement are non-refundable except as provided for herein. It shall be the responsibility of the registrar to pay a separate registration fee owed to the CXDA by such registrar and no Application will be accepted until such separate registration fee is paid. It shall not be the duty of the CXDA to refund any Registration Fee or other fee to the Registrant in the event of non-performance by such registrar, since the disposition of such Registration Fee is being a matter of performance of a contract between the Registrant and such registrar.
3. *Term and Renewal Term.* The Registrant's exclusive registration of the .cx Domain name shall continue for the term specified in an accepted Application (the "Term"). The Registrant may have the right to renew a registration in accordance with the CXDA Policies in effect at the end of the Registrant's then current Term.

4. *Registrant Information.* The Registrant shall ensure that:

(i) the information submitted by or on behalf of the Registrant to the .cx ccTLD registry in connection with registration of the .cx Domain name(s) or otherwise ("Registrant Information") will during the Term comply with the CXDA Policies and is and will remain true, current, complete, accurate, and reliable; and

(ii) the Registrant shall maintain, update, and keep the Registrant Information true, current, complete, accurate, and reliable by notifying CXDA immediately of a change to any such information in accordance with the appropriate CXDA Policy relating to modifications to the Registrant Information. CXDA reserves and may exercise the right to terminate the Registrant's registration of the .cx Domain name if (i) information provided by the Registrant to CXDA is false, inaccurate, incomplete, unreliable, misleading or otherwise secretive; or (ii) the Registrant fails to maintain, update, and keep the Registrant Information true, current, complete, accurate, and reliable. The Registrant acknowledges that a breach of this Section will constitute a material breach of this Agreement, which will entitle CXDA to terminate this Agreement immediately upon such breach without any refund of the Registration Fee and without notice to the Registrant.

The Registrant acknowledges that all personal information about the Registrant which is supplied to CXDA or an registrar is held for the benefit of the Christmas Island and global internet communities and may be required to be publicly disclosed to third parties and used to maintain a public "WHOIS" service, provided that such disclosure is consistent with the CXDA Policies.

Registrants must provide the following information to CXDA or its registrar:

- Legally recognized first and last name (surname) of the contact person for the Registrant (this contact person may be the Registrant itself).
- If the Registrant is an organization, association, limited liability company, proprietary limited company, or other legally recognized entity, the contact person must be a person authorized under the applicable law in the applicable territory to legally bind the entity.
- Valid postal address of the Registrant.
- Functioning e-mail address of the Registrant.
- Working telephone number for the Registrant, including country code, area code, and proper extension, if applicable.

Providing true, current, complete, and accurate contact information is an absolute condition of registration of a .cx Domain name within the .cx ccTLD. If any Registrant Information provided during registration or subsequent modification to that information is false, inaccurate or misleading, or conceals or omits pertinent information, CXDA may instruct the registry to terminate, suspend or place on hold the .cx Domain name(s) of any Registrant without notification and without refund to the Registrant; and

- (i) The Registrant is responsible for keeping the Registrant Information up to date and responding in a timely fashion to communications regarding the .cx domains registered by them.
- (ii) The Registrant may be requested to submit content, material, web page(s) or URL(s) accessed through the CXDA registry to the manufactures of internet content filters listed on the CXDA website [insert link], and such request shall be a binding obligation.

5. *Agents.* The Registrant understands, acknowledges and agrees that by using the .cx Domain name, the Registrant ratifies and is bound by this Agreement (including the CXDA Policies incorporated into this Agreement) even if an agent (such as an Internet Service Provider, Domain name retailer, or employee) entered into this Agreement on the Registrant's behalf, and even if the Registrant has not itself read this Agreement. Further, the Registrant is responsible for all information submitted by its agent. CXDA will not cancel this Agreement, or refund any fees, because of any errors or omissions by the agent in the registration process or thereafter (e.g. if such agent provides incorrect Registrant Information), as such apparent authority will suffice to bind the Registrant. By acting on the Registrant's behalf, such agent represents and warrants to the Registrant and CXDA that the agent is authorised to bind the Registrant hereto and that it has fully and thoroughly advised the Registrant of the terms and conditions of this Agreement (including the CXDA Policies incorporated into this Agreement).
6. *Scope of Registration.* On payment of the Registration Fee to the registrar and after payment by the registrar to CXDA of the registration fee and after acceptance of the Application, the Registrant will be entitled to a licence for the exclusive use of the domain name resolution services relating to the .cx Domain name for the Term. However, the Registrant shall not use, display, exploit, or register a .cx Domain name in any manner which may constitute illegal activity or be in contravention or violation of CXDA Policies. The Registrant acknowledges that a breach of this Section will constitute a material breach of this Agreement, which will entitle CXDA to terminate this Agreement immediately upon such breach without any refund of the Registration Fee. CXDA or a registrar may, in such party's sole discretion, refuse registration of or discontinue to provide services with respect to the Registrant's desired .cx Domain name within thirty (30) calendar days from receipt of payment of the Registration Fee by the registrar. In case of such refusal without cause ("cause" being defined as dishonouring any payment made to an registrar and/or CXDA or any violation of the CXDA Policies), CXDA shall refund to the registrar the separate registration fee received by the CXDA and the registrar shall refund to the Registrant the Registration Fee. Neither CXDA nor a registrar shall be liable for any loss, damage, or other injury whatsoever resulting from CXDA or registrar's refusal to register or to discontinue services in relation to the Registrant's desired .cx Domain name.
7. *Registrant Representations and Warranties.* The Registrant represents, warrants, and guarantees that:
  - (i) the Registrant understands that registration entitles the Registrant only to a licence for the use of the domain name resolution services relating to the .cx Domain name for the Term and that use of such services is subject to this Agreement (including the CXDA Policies) and other pertinent rules and laws, including those concerning trademarks and other types of intellectual property, as these may now exist or be revised from time to time;
  - (ii) to the best of the Registrant's knowledge and belief, neither the registration of the .cx Domain name nor the manner in which it is to be directly or indirectly used infringes the legal rights or intellectual property rights of a third party;
  - (iii) the Registrant will use, display, or exploit the .cx Domain name in good faith, and in accordance with the laws of Australia, international law, and applicable state laws and regulations, and will not use the .cx Domain name in any way which may violate a subsisting right of CXDA or any third party;
  - (iv) the information provided by the Registrant is true and accurate, and the Registrant will update said information immediately if it changes;
  - (v) the Registrant is either (a) an identifiable human individual (over the age of 18 years); or (b) a legally recognized statutory entity (such as a Limited Liability Company, Partnership, Association, Society or Proprietary Limited Company);

- (vi) the Registrant will promptly notify CXDA of any actual or threatened proceedings brought in respect of the words used as or incorporated in the .cx Domain name whether by or against the Registrant;
  - (vii) the Registrant will not, directly or indirectly, through registration or use of the .cx Domain name or otherwise:
    - (a) register a .cx Domain name for the purpose of diverting trade from another business or website;
    - (b) deliberately register as a .cx Domain name misspellings of another entity's personal, company or brand name in order to pass-off or trade on the business, goodwill or reputation of another;
    - (c) grant or purport to grant a security interest or other encumbrance on or over the .cx Domain name unless such security interest or other encumbrance does not exceed the limited rights of the Registrant in the .cx Domain name, does not impair the Registrant's ability to fulfil the Registrant's obligations under this Agreement, and does not impose obligations on the CXDA beyond the obligations owed by the CXDA to a registrant in the absence of such a security interest or encumbrance;
  - (viii) the Registrant meets and will continue to meet for the whole of the Term any eligibility criteria prescribed in the CXDA Policies for registering and using the .cx Domain name;
  - (ix) that the Registrant will maintain the Registrant Information provided pursuant to according to the CXDA requirements;
  - (x) the Registrant has not previously submitted an application for registration of a domain name for the same character string with another registrar where:
    - (a) the Registrant is relying on the same eligibility criteria for both domain name applications; and
    - (b) the character string has previously been rejected by the other registrar;
  - (xi) any content, material or web page contained on any Uniform Resource Locator ("URL"), web site or web page accessing, utilising or accessed by means of the .cx Domain name complies with the CXDA Acceptable Use Policy and does not constitute or contain any illegal or prohibited content, including, but not limited to indecent, obscene, or pornographic material (as described more fully in the CXDA Acceptable Use Policy), whether incorporated directly into or linked from a web site resolved via a .cx Domain name;
  - (xii) the use of the .cx Domain name and of any web page or URL accessed by or utilising the .cx Domain name will comply with the requirements of the CXDA Acceptable Use Policy and CXDA recommended policies including, without limitation, those policies relating to spam.
8. *CXDA Representations and Warranties.* CXDA represents, warrants, and guarantees that:
- (i) CXDA manages the .cx top level domain name in trust for the Christmas Island Community;
  - (ii) CXDA has the full right, power, legal capacity, ability, and authority to enter into this Agreement, and to carry out the terms and conditions hereof notwithstanding the disclaimer below;

- (iii) CXDA or a designated agent, will process the Registrant's Application and consider whether to accept or reject it in accordance with the criteria laid down in this Agreement (including the CXDA Policies);
- (iv) CXDA will, if the Application is successful, use its reasonable endeavours to ensure that the details supplied by the Registrant are entered into and maintained in the .cx zone file; and

CXDA's breach or misrepresentation of these warranties shall constitute a material breach of this Agreement. In the event of such material breach by CXDA, the Registrant's only recourse against CXDA shall be to terminate its Agreement with CXDA. CXDA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE MAXIMUM EXTENT POSSIBLE, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST INFRINGEMENT. CXDA DOES NOT GUARANTEE ANY INFORMATION PROVIDED TO THE REGISTRANT BY IT OR ITS AGENTS NOT INCORPORATED INTO THIS AGREEMENT AND, ACCORDINGLY, NO SUCH INFORMATION CREATES ANY EXPRESS OR IMPLIED WARRANTY. CXDA's SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND THE REGISTRANT AGREES THAT CXDA WILL REGISTER DOMAIN NAMES ON A FIRST COME, FIRST SERVED BASIS. CXDA DOES NOT GUARANTEE THAT ANY DOMAIN APPLIED FOR BY THE REGISTRANT WILL BE AVAILABLE OR WILL BE SUCCESSFULLY REGISTERED, AND THE REGISTRANT AGREES THAT IT DOES NOT HAVE ANY RIGHT OF OWNERSHIP IN A REGISTERED DOMAIN.

9. *Breach.* Failure of a Registrant to abide by any provision of this Agreement (including the CXDA Policies) may be considered a material breach. In the event of such material breach, CXDA may provide a written (including email) notice to the Registrant describing the breach. The Registrant in such event then has thirty (30) days to rectify or cure such breach or to provide evidence reasonably satisfactory to CXDA that there is no breach of this Agreement or CXDA Policies. In the event of a breach that is not rectified, cured or refuted by the Registrant to CXDA's satisfaction, CXDA may cancel the Registrant's registration of and licence to use the .cx Domain name without refund and without further notice, and pursue any and all legal remedies it may have against the Registrant. Any such breach by the Registrant shall not be deemed excused in the event that CXDA did not act earlier in response to the breach by Registrant. In the event of a breach which, in the opinion of the CXDA or an registrar, causes immediate harm to the public interest or the CXDA registry or which violates any applicable law or regulation, then an registrar and/or the CXDA may modify, suspend, or terminate services to the Registrant without written notice, the modification, suspension, or termination of services constituting notice to Registrant that such a breach has occurred. See section 11 below for important limitations on the liability of CXDA and registrars with regard to good faith acts by such parties under this Section.
10. *Disputes Involving Registrants.* The Registrant acknowledges that CXDA cannot, and does not, screen or otherwise review any Application to verify that the Registrant has legal rights to use a particular character string as or in a .cx Domain name. In the event that any party disputes the Registrant's legal right to use, display, exploit, or register the .cx Domain name in any fashion, including allegations that prohibited material (as defined in the CXDA Acceptable Use Policy) is displayed on or linked to from a website which is resolved via a .cx Domain name, CXDA and the Registrant shall act in accordance with and agree to be bound by CXDA's Complaint Resolution Policy and Service. The Registrant is strongly encouraged to, prior to applying for registration of the .cx Domain name, perform a trade mark search with respect to the acronyms, words and/or phrases comprising the .cx Domain name. The Registrant will be solely liable in the event that the Registrant's use of a .cx Domain name constitutes an infringement or other violation of a third party's rights.

11. *Indemnity.* The Registrant shall defend, indemnify, and hold harmless CXDA, the registry operator, registrars and such parties' officers, directors, shareholders, owners, managers, employees, agents, contractors, affiliates, lawyers and attorneys ("CXDA Related Parties") from and against any and all claims of third parties or made by the Registrant, including, but not limited to all loss, liability, claims, demands, damages, cost or expense, causes of action, suits, proceedings, judgments, awards, executions and liens, including reasonable lawyers or attorneys' fees (which lawyers or attorneys shall be hired at the sole discretion of the indemnified party) and costs (including claims without legal merit or brought in bad faith), relating to or arising under this Agreement, the registration or use of the indemnified party's domain registration or other services, or to the .cx Domain name itself, including the Registrant's use, display, exploitation, or registration of the .cx Domain name, as well as for any infringing or otherwise damaging content displayed or otherwise made available on or by means of the .cx Domain name. If an indemnified party is threatened by claims or suit of a third party, the indemnified party may seek written assurances from the Registrant concerning the Registrant's indemnification obligations. Failure to provide such written assurances is a material breach of this Agreement. Failure of the Registrant to fully indemnify the indemnified party in a timely manner may result in termination, suspension, or modification of the domain name registration services and any such termination, suspension, or modification shall in no way prejudice or substitute for an indemnified party's right to seek indemnification by way of litigation or otherwise.
  
12. **DISCLAIMER AND LIMITATION OF LIABILITY.** The Registrant acknowledges and agrees that, to the maximum extent possible, **CXDA AND THE CXDA RELATED PARTIES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, RELATING TO THE USE, OR THE INABILITY TO USE, THE DOMAIN, OR IN ANY OTHER WAY RELATED TO THE DOMAIN, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE. ADDITIONALLY, CXDA AND CXDA RELATED PARTIES SHALL NOT BE LIABLE WHATSOEVER FOR ANY LOSSES OR DAMAGES THAT THE REGISTRANT MAY INCUR AS A RESULT OF UNAUTHORIZED USE OF THE DOMAIN ARISING FROM "HACKING", DENIAL OF SERVICE ATTACK, VIRUS, WORM OR OTHERWISE, OR FOR LACK OF FITNESS FOR A PARTICULAR PURPOSE OF THE DOMAIN OR SERVICES RELATED TO THE DOMAIN NAME.**

IN THE EVENT THAT CXDA OR A CXDA RELATED PARTY TAKES ACTION WITH RESPECT TO A .cx DOMAIN NAME, WHICH ACTION IS REVERSED, MODIFIED, OR ACKNOWLEDGED TO HAVE BEEN INCORRECT BY CXDA, A CXDA RELATED PARTY, BY OR THROUGH THE CXDA COMPLAINT RESOLUTION SERVICE, OR BY A COURT, THEN REGISTRANT AGREES THAT, ABSENT BAD FAITH BY SUCH PARTY, THAT CXDA AND CXDA RELATED PARTIES SHALL NOT BE LIABLE WHATSOEVER FOR ANY DAMAGES THAT THE REGISTRANT MAY SUFFER THEREBY, EVEN IF CXDA OR CXDA RELATED PARTIES HAVE BEEN ADVISED OF THE POTENTIAL FOR SUCH DAMAGES, AND EVEN IF CXDA OR CXDA RELATED PARTIES MAY FORESEE SUCH POSSIBLE DAMAGES. THE REGISTRANT'S SOLE REMEDY UNDER SUCH CIRCUMSTANCES SHALL BE THE RESUPPLY OF THE SERVICES AGAIN, IF POSSIBLE, OR, IF NOT POSSIBLE, A REFUND OF THE REGISTRATION FEE OR RENEWAL FEE (IF THE CIRCUMSTANCE OCCURRED DURING A RENEWAL TERM), WHICH REMEDY THE REGISTRANT ACKNOWLEDGES CONSTITUTES THE ONLY POSSIBLE DIRECT DAMAGES FLOWING FROM THIS AGREEMENT.

IN ADDITION, CXDA AND CXDA RELATED PARTIES ARE NOT LIABLE WHATSOEVER FOR ANY DAMAGES THAT THE REGISTRANT MAY SUFFER BECAUSE OF SERVICE OR SYSTEM FAILURE, INCLUDING DOMAIN NAME SYSTEM FAILURE, ROOT SERVER FAILURE, INTERNET PROTOCOL ADDRESS FAILURE, ACCESS DELAYS OR INTERRUPTIONS, DATA NON-DELIVERY OR MIS-DELIVERY, ACTS OF GOD, UNAUTHORISED USE OF PASSWORDS, ERRORS, OMISSIONS OR MIS-

STATEMENTS IN ANY INFORMATION OR OTHER SERVICES PROVIDED UNDER THIS AGREEMENT, DELAYS OR INTERRUPTIONS IN DEVELOPMENT OF WEB SITES, RE-DELEGATION OF THE .cx TOP LEVEL DOMAIN NAME, OR BREACH OF SECURITY, EVEN IF CXDA OR CXDA RELATED PARTIES HAVE BEEN ADVISED OF THE POTENTIAL FOR SUCH DAMAGES, AND EVEN IF CXDA OR CXDA RELATED PARTIES MAY FORESEE SUCH POSSIBLE DAMAGES. THE REGISTRANT'S SOLE REMEDY FOR CXDA OR CXDA RELATED PARTIES' BREACH OF THIS AGREEMENT SHALL BE, AT THE SOLE DISCRETION OF CXDA OR CXDA RELATED PARTIES, THE RESUPPLY OF THE SERVICES AGAIN OR A REFUND OF THE REGISTRATION FEE OR RENEWAL FEE (IF THE BREACH OCCURS DURING A RENEWAL TERM), WHICH REMEDY THE REGISTRANT ACKNOWLEDGES CONSTITUTES THE ONLY POSSIBLE DIRECT DAMAGES FLOWING FROM THIS AGREEMENT. THE REGISTRANT'S SOLE REMEDY FOR AN ACTION NOT FLOWING FROM THIS AGREEMENT (IN TORT OR OTHERWISE) SHALL BE LIMITED TO THE AMOUNT OF MONEY PAID TO CXDA OR CXDA RELATED PARTIES BY THE REGISTRANT.

13. *Notices.* Notices to CXDA shall be delivered by registered or certified mail, postage prepaid, or reputable commercial courier service (e.g., Express Mail or Federal Express) in the manner of quickest delivery (i.e., overnight delivery, if possible) to:

Christmas Island Domain Administration Limited  
c/o CoCCA Registry Services (NZ) Limited  
11a Wynyard Street, Devonport  
Auckland, New Zealand

Notices should also be scanned and sent by email to [notices@cxda.org.cx](mailto:notices@cxda.org.cx)

Notices mailed by registered or certified official mail of a country shall be deemed delivered on receipt.

Notices to Registrant shall be delivered by registered or certified mail, postage prepaid, or reputable commercial courier service (e.g., Express Mail or Federal Express) in the manner of quickest delivery (i.e., overnight delivery, if possible) or, in the sole discretion of the CXDA or a CXDA Related Party, by email or fax to the Registrant Information.

14. *Governing Law / Forum Selection.* For all disputes in which the CXDA may be or is a party to the dispute, this Registrant Agreement shall be exclusively governed by the laws of Australia applicable to contracts made and performed in Australia, without regard to conflict of laws principles. The Registrant hereby consents to the exclusive personal jurisdiction of the courts of Australia, for any and all claims or disputes directed against the CXDA and which arise out of, purport to enforce, construe, or otherwise relate to the .cx Domain name, this Agreement, or CXDA Policies. The exclusive venue for such action shall be the Courts of Australia. The Registrant waives any right to object to venue or jurisdiction based on inconvenient forum or for any other reason, and the Registrant waives any statutory or other right pursuant to the laws of the jurisdiction in which Registrant resides to have a case relating to this Agreement adjudicated or resolved in that jurisdiction. By way of information and not as a term binding against the CXDA, disputes not involving the CXDA as a party may be governed by a governing law and/or forum selection clause contained in a separate agreement, if any, between the Registrant and such other disputant (for example, disputes between and registrar and a Registrant may be governed by a separate agreement, if any, between the Registrant and the registrar); provided, however, that no such separate agreement may modify or waive either CXDA's or Registrant's consent to exclusive choice of law, jurisdiction, and venue in Australia and the courts of Australia for disputes in which the CXDA is or may be a party, as described above.
15. *OWNERSHIP OF INFORMATION AND DATA.* Registrant agrees and acknowledges that CXDA and/or any CXDA delegee shall own all database, compilation, collective and similar rights, title

and interests worldwide in any domain name database(s), and all information and derivative works generated from the domain name database(s) and that such domain name database may include, without limitation, (a) the original creation date of domain name registration(s), (b) the expiration date of domain name registration(s), (c) the name, postal address, e-mail address, voice telephone number, and, when available, fax number of all contacts for domain name registration(s), (d) any remarks concerning registered domain name(s) that appear or should appear in the WHOIS or similar information repositories, and (e) any other information generated or obtained in connection with providing domain name registration services. CXDA and/or any CXDA delegee shall not have any ownership interest in a single Registrant's specific Registration Information outside of CXDA and/or any CXDA delegee's rights in one or more domain name database(s).

16. *Severability.* If any provision of this Agreement is held invalid, unenforceable, or void, the remainder of the Agreement shall not be affected thereby and shall continue in full force and effect as nearly as possible to reflect the original intention of CXDA and the Registrant in executing this Agreement.
17. *No Waiver.* The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by the other party shall not be a waiver of such right or remedy with respect to any other breach or failure by the other party.
18. *Full Integration.* This Agreement, together with the CXDA Policies expressly incorporated herein by reference, constitutes the entire agreement between the Registrant and CXDA relating to the .cx Domain name. No prior or contemporaneous written, oral, and electronic representation, negotiation, or agreement form a part of this Agreement, and this Agreement supersedes all prior written, oral, or electronic agreements between the Registrant and CXDA relating to the .cx Domain name. Additional agreements, if any, may be entered into between the Registrant and registrars relating to domain name services in the .cx TLD provided by such registrars, provided that no such additional agreement may waive, alter, or supersede any provision of this Agreement nor may such an additional agreement impose any obligation upon CXDA without CXDA's express written consent. If there is any conflict between such additional agreements and this Agreement, this Agreement shall control.
19. *Written Agreement.* This Agreement constitutes a written agreement between Registrant and CXDA even though the Registrant's Application may be dispatched electronically, and even though CXDA may accept the Application electronically. A printed version of this Agreement, and of any notice given in electronic form related to this Agreement, shall be admissible in judicial or administrative proceedings to the same extent, and subject to the same restrictions, as other business contracts, documents, or records originally generated and maintained in printed form.
20. *Assignment.* The parties agree that CXDA is able to assign this Agreement to a third party without prior written notice to the Registrant.
21. *Survival of Obligations.* The parties agree that clauses [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#), [14](#), and [15](#) shall survive the expiry or termination of this Agreement.

THIS AGREEMENT IS EFFECTIVE AND BINDING as of the date of acceptance hereof by CXDA (i.e., the date of registration and of the .cx Domain name).



This **Acceptable Use Policy** ("AUP") sets out the actions prohibited to users of the Christmas Island Domain Administration Limited administered registry ("CXDA" registry). "Users" are defined as anyone who uses or accesses the .cx domain registry, who has responsibility for one or more host or contact records in the .cx registry, registrants of a .cx country code Top Level ("ccTLD") Domain name (".cx Domain name"), and/or users of hardware, name servers, bandwidth, telecommunications transport, zone files or e-mail routing services or of any other domain name resolution systems and services in the .cx registry and zone.

This policy applies recursively to all .cx Domain names (which end in the two letter suffix .cx), including second-level .cx Domain names (such as <nic.cx]) and sub second-level domains (such as <example.nic.cx>) which resolve as a result of sub-delegation.

This AUP is in addition to rules governing qualifications for registration. Use of a .cx Domain name or the CXDA registry in a manner that contravenes this AUP, may result in the suspension or revocation of a registrant's right to use a .cx Domain name or to continue to be recognized as the registrant of a .cx Domain name. Suspension or revocation may apply to one or more .cx Domain names for which User is a registrant in addition to a particular .cx Domain name which may have given rise to a particular complaint.

CXDA reserves the right to modify or update this AUP at any time and any such modifications or restatements shall be posted on CXDA's website at <https://cxda.org.cx> from time to time. CXDA will use reasonable commercial efforts to inform designated contacts in the event of changes to this AUP. Such efforts may include posting the revised AUP on CXDA's website and/or sending email notice that this AUP has been modified or updated.

## INTRODUCTION

- CXDA supports the free flow of information and ideas over the Internet. Accordingly, CXDA does not actively screen or monitor, nor does it exercise editorial control over the content of any message or web site made accessible by domain name resolution services in the .cx ccTLD.
- CXDA may discontinue, suspend, or modify the services provided to any .cx Domain name (for example, through modification of .cx zone files), to address alleged violations of this AUP (described further below). CXDA may determine in its sole discretion whether use of the CXDA registry or a .cx Domain name is prima facie violation of this AUP. CXDA or affected parties may utilize the CXDA AUP CRS and/or the courts in the jurisdiction and venue specified in the Registrant Agreement to resolve disputes over interpretation and implementation of this AUP, as described more fully in the CXDA AUP CRS.
- Users of the CXDA registry are obliged and required to ensure that their use of a .cx Domain name or the CXDA registry is at all times lawful and in accordance with the requirements of this AUP and applicable laws and regulations of Australia, the operation of the .cx ccTLD falling within the jurisdiction and being governed by the laws of Australia.
- This AUP should be read in conjunction with the CXDA **Registrant Agreement**, **Complaint Resolution Policy**, **Privacy Policy**, and other applicable agreements, policies, laws and regulations. By way of example, and without limitation, the Registrant Agreement sets forth representations and warranties and other terms and conditions, breach of which may constitute non-compliance with this AUP.

## PROHIBITED USE

A "Prohibited use" of the CXDA registry or a .cx Domain name is a use which is expressly prohibited by provisions of this AUP. The non-exhaustive list of restrictions pertaining to use of the CXDA registry and .cx Domain names in relation to various purposes and activities are as

follows. Registration of one or more .cx Domain names or access to services provided by CXDA may be cancelled or suspended for any breach of, or non-compliance with this AUP:

## **1. COMPLIANCE WITH LAW**

**1.1** The CXDA registry and .cx Domain names must only be used for lawful purposes. The creation, transmission, distribution, storage of, or linking to any material in violation of applicable law or regulation is prohibited. This may include, but is not limited to, the following:

- (1) Communication, publication or distribution of material (including through links or framing) that infringes upon the intellectual and/or industrial property rights of another person. Intellectual and/or industrial property rights include, but are not limited to: copyrights (including future copyright), design rights, patents, patent applications, trade marks, rights of personality, and trade secret information.
- (2) Use of a .cx Domain name in circumstances in which:
  - (a) The .cx Domain name is identical or confusingly similar to a personal name, company, business or other legal or trading name as registered with the relevant Australia agency, or a trade or service mark in which a third party complainant has uncontested rights, including without limitation in circumstances in which:
    - (i) The use deceives or confuses others in relation to goods or services for which a trade mark is registered in Australia, or in respect of similar goods or closely related services, against the wishes of the registered proprietor of the trade mark; or
    - (ii) The use deceives or confuses others in relation to goods or services in respect of which an unregistered trade mark or service mark has become distinctive of the goods or services of a third party complainant, and in which the third party complainant has established a sufficient reputation in Australia, against the wishes of the third party complainant; or
    - (iii) The use trades on or passes-off a .cx Domain name or a website or other content or services accessed through resolution of a .cx Domain as being the same as or endorsed, authorised, associated or affiliated with the established business, name or reputation of another; or
    - (iv) The use constitutes intentionally misleading or deceptive conduct in breach of CXDA policy, or the laws of Australia; or
  - (b) The .cx Domain name has been used in bad faith, including without limitation the following:
    - (i) The User has used the .cx Domain name primarily for the purpose of unlawfully disrupting the business or activities of another person; or
    - (ii) By using the .cx Domain name, the User has intentionally created a likelihood of confusion with respect to the third party complainant's intellectual or industrial property rights and the source, sponsorship, affiliation, or endorsement of website(s), email, or other online locations or services or of a product or service available on or through resolution of a .cx Domain name;
    - (iii) For the purpose of unlawfully selling, renting or otherwise transferring the Domain name to an entity or to a commercial competitor of an entity,

for valuable consideration in excess of a User's documented out-of-pocket costs directly associated with acquiring the Domain Name;

- (iv) As a blocking registration against a name or mark in which a third party has superior intellectual or industrial property rights.
- (3) A .cx Domain name registration which is part of a pattern of registrations where the User has registered domain names which correspond to well-known names or trademarks in which the User has no apparent rights, and the .cx Domain name is part of that pattern;
- (4) The .cx Domain name was registered arising out of a relationship between two parties, and it was mutually agreed, as evidenced in writing, that the Registrant would be an entity other than that currently in the register.
- (5) Unlawful communication, publication or distribution of registered and unregistered know-how, confidential information and trade secrets.
- (6) Communication, publication or distribution, either directly or by way of embedded links, of images or materials (including, but not limited to pornographic material and images or materials that a reasonable person as a member of the community of Australia would consider to be obscene or indecent) where such communication, publication or distribution is prohibited by or constitutes an offence under the laws of Australia, whether incorporated directly into or linked from a web site, email, posting to a news group, internet forum, instant messaging notice which makes use of domain name resolution services in the .cx ccTLD.

Material that a reasonable member of the community of Australia would consider pornographic, indecent, and/or obscene or which is otherwise prohibited includes, by way of example and without limitation, real or manipulated images depicting child pornography, bestiality, excessively violent or sexually violent material, sexual activity, and material containing detailed instructions regarding how to commit a crime, an act of violence, or how to prepare and/or use illegal drugs.

- (7) Communication, publication or distribution of defamatory material or material that constitutes racial vilification.
- (8) Communication, publication or distribution of material that constitutes an illegal threat or encourages conduct that may constitute a criminal offence.
- (9) Communication, publication or distribution of material that is in contempt of the orders of a court or another authoritative government actor within Australia.
- (10) Use, communication, publication or distribution of software, technical information or other data that violates Australia export control laws.
- (11) Use, communication, publication or distribution of confidential or personal information or data which violates any right of privacy including confidential or personal information about persons that is collected without their knowledge or consent.

## **2. ELECTRONIC MAIL**

### **2.1 CXDA expressly prohibits Users of the CXDA registry from engaging in the following activities:**

- (1) Communicating, transmitting or sending unsolicited bulk e-mail messages or other electronic communications ("junk mail" or "Spam") of any kind including, but not limited to, unsolicited commercial advertising, informational announcements, and political or religious tracts. Such messages or material may be sent only to those who have expressly

requested it. If a recipient asks a User to stop sending such e-mails, then any further e-mail messages or other electronic communications would in such event constitute Spam and violate the provisions and requirements of this AUP.

- (2) Communicating, transmitting or sending any material by e-mail or otherwise that harasses, or has the effect of harassing, another person or that threatens or encourages bodily harm or destruction of property including, but not limited to, malicious e-mail and flooding a User, site, or server with very large or numerous pieces of e-mail or illegitimate service requests.
- (3) Communicating, transmitting, sending, creating, or forwarding fraudulent offers to sell or buy products, messages about "Make-Money Fast", "Pyramid" or "Ponzi" type schemes or similar schemes, and "chain letters" whether or not the recipient wishes to receive such messages.
- (4) Adding, removing, modifying or forging CXDA registry or other network header information with the effect of misleading or deceiving another person or attempting to impersonate another person by using forged headers or other identifying information ("Spoofing").

### **3. DISRUPTION OF CXDA REGISTRY**

**3.1** No-one may use the CXDA registry or a .cx Domain name for the purpose of:

- (1) Restricting or inhibiting any person in their use or enjoyment of the CXDA registry or a .cx Domain name or any service or product of CXDA.
- (2) Actually, or purportedly reselling CXDA services and products without the prior written consent of CXDA.
- (3) Transmitting any communications or activity which may involve deceptive marketing practices such as the fraudulent offering of products, items, or services to any other party.
- (4) Providing false or misleading information to CXDA or to any other party through the CXDA Network.
- (5) Facilitating or aiding the transmission of confidential information, private, or stolen data such as credit card information (without the owner's or cardholder's consent).

### **4. CONSUMER PROTECTION, FAIR TRADING**

**4.1** A User using a .cx Domain to sell goods or services over the Internet must provide clear links with sufficient and accurate contact details on such website so that consumers have the ability to contact the seller of such goods or services, and so that customers and prospective customers are clearly advised of any territorial limitations on the offer, sale or provision of any goods or services offered, sold or provided, and of any applicable laws. In the event that it is credibly alleged that a .cx Domain name registrant has not followed such laws, CXDA will furnish the contact details for the registrant in accordance with the CXDA Privacy Policy.

### **5. NETWORK INTEGRITY AND SECURITY**

**5.1** Users are prohibited from circumventing or attempting to circumvent the security of any host, network or accounts ("cracking" or "hacking") on, related to, or accessed through the CXDA Network. This includes, but is not limited to:

- (1) accessing data not intended for such user;

- (2) logging into a server or account which such user is not expressly authorised to access;
- (3) falsifying a username or password;
- (4) probing the security of other networks;
- (5) executing any form of network monitoring which will intercept data not intended for such user.
- (6) Hosting malware on a .cx website

**5.2** Users are prohibited from effecting any network security breach or disruption of any Internet communications including, but not limited to:

- (1) accessing data of which such User is not an intended recipient; or
- (2) logging onto a server or account which such User is not expressly authorised to access.

For the purposes of this section 5.2, "disruption" includes, but is not limited to:

port scans, ping floods, packet spoofing;

forged routing information;

deliberate attempts to overload a service, and attempts to "crash" host;

using the CXDA registry in connection with the use of any program, script, command, or sending of messages to interfere with another user's terminal session by any means, locally or by the Internet.

**5.3** Users who compromise or disrupt CXDA registry systems or security may incur criminal or civil liability. CXDA will investigate any such incidents and will cooperate with law enforcement agencies if a crime is suspected to have taken place.

**NON-EXCLUSIVE, NON-EXHAUSTIVE**

This AUP is intended to provide guidance as to what constitutes acceptable use of the CXDA registry and of .cx Domain names. However, the AUP is neither exhaustive nor exclusive.

**COMPLAINTS**

Persons who wish to notify CXDA of abusive conduct in violation of this AUP may report the same pursuant to the CXDA Acceptable Use Policy Enforcement Procedure, which is instituted by submitting to CXDA a completed CXDA Acceptable Use Policy Violation Complaint Form.

**ENFORCEMENT**

CXDA may, in its sole discretion, suspend or terminate a User's service for violation of any of the requirements or provisions of the AUP on receipt of a complaint if CXDA believes suspension or termination is necessary to comply with the law, protect the public interest, prevent unlawful activity or protect the health, safety, or privacy of an individual.

If immediate action is not required, CXDA will work with Registrants and a complainant to remedy violations in accordance with the provisions detailed in the AUP Complaint Resolution Service and Policy to ensure compliance with this AUP violation prior to suspension or terminating service.

## LIMITATION OF LIABILITY

In no event shall CXDA be liable to any User of the CXDA Network, any customer, nor any third party for any direct, indirect, special or consequential damages for actions taken pursuant to this AUP, including, but not limited to, any lost profits, business interruption, loss of programs or other data, or otherwise, even if CXDA was advised of the possibility of such damages. CXDA's liability for any breach of a condition or warranty implied by the Registrant Agreement or this AUP shall be limited to the maximum extent possible to one of the following (as CXDA may determine):

- (i) supplying the services again; or
- (ii) paying the cost of having the services supplied again.

## REMOVAL OF CONTENT RESPONSIBILITY

At its sole discretion, CXDA reserves the right to:

- (i) Remove or alter content, zone file data or other material from registry servers provided by any person that violates the provisions or requirements of this AUP; or
- (ii) terminate access to the CXDA registry by any person that CXDA determines has violated the provisions or requirements of this AUP.

In any regard, CXDA is not responsible for the content or message of any newsgroup posting, e-mail message, or web site regardless of whether access to such content or message was facilitated by the CXDA Network. CXDA does not have any duty to take any action with respect to such content or message by creating this AUP, and Users of the CXDA registry are obliged and required to ensure that their use of a .cx Domain name or the CXDA registry is at all times in accordance with the requirements of this AUP and any applicable laws and/or regulation.