

LONDON INTERNET EXCHANGE LIMITED (LINX)

ASSOCIATE MEMBERSHIP AGREEMENT [v1.0: 29th October 2004]

BASIS OF PROVISION OF CONTRACT

This document together with those contained in the Conditions of Contract govern the relationship between an Associate Member and LINX and LINX agrees to deal with the Associate Member on such conditions to the exclusion of all other terms, conditions, warranties or representations (other than those made fraudulently).

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LONDON INTERNET EXCHANGE LIMITED (LINX)

Registered Office Address:

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Peterborough

PE1 2UX

Company number: 3137929



1 DEFINITIONS

In this document, unless the context requires otherwise, the following expressions have the following meanings:

- 1.1 **"the Agreement"** means this document together with the Conditions of Contract, both of which govern the relationship between LINX and an Associate Member
- 1.2 **"Associate Member"** means, for the purposes of this document, any organisation admitted into associate membership by the Members upon the admission terms and conditions as set out in this Agreement
- 1.3 **"Conditions of Contract"** means the formal contract document signed between LINX and an Associate Member which defines the Services to be provided by LINX and the Fees and/or services to be provided by an Associate Member in return for the Services
- 1.4 **"Council"** is the Council of Management as defined in the Memorandum and Articles of Association – see Clause 18 "References". For the avoidance of doubt, the Council may, in some instances, be informally referred to as the Board
- 1.5 **"Member"** refers to an organisation who has successfully met and continues to meet LINX joining requirements, has signed a copy of the MoU and is thereby eligible to receive LINX Services under the terms of the MoU – see Clause 18 "References"
- 1.6 **"Memorandum of Understanding" or "MoU"** means the contractual agreement between a Member and LINX, together with its appendices – see Clause 18 "References"
- 1.7 **"the Rackspace"** means, if applicable, adequate space within a full-height vertical rack with lockable doors, and having the other features specified in the Conditions of Contract
- 1.8 **"the Location"** means the LINX suite situated at the address in which the Rackspace will be located and which is defined in the Conditions of Contract
- 1.9 **"LINX Equipment"** means the various switches, routers and such other equipment utilised by the LINX for the purpose of operating an Internet exchange
- 1.10 **"Services"** means the Services to be provided by LINX to an Associate Member and which are defined in the Conditions of Contract
- 1.11 **"Start Date"** means the date on which the Conditions of Contract is signed by both parties
- 1.12 **"Fees"** means, if applicable, the fee payable and/or the service to be provided by the Associate Member as set out in the Conditions of Contract
- 1.13 **"Technical Requirements"** means those requirements to which all members shall adhere and which are appended to the LINX MoU as Appendix 1.

2 SERVICES TO BE PROVIDED BY THE LINX

- 2.1 LINX will provide the Services to the Associate Member of the type and standard specified in the Conditions of Contract.

3 OBLIGATIONS OF THE ASSOCIATE MEMBER

- 3.1 The Associate Member will, if applicable, either pay to LINX the Fees, the terms of which are set out in the Conditions of Contract, or, if applicable, provide services to LINX and/or its Members in accordance with the Conditions of Contract
- 3.2 The Associate Member shall ensure that usage of LINX is not detrimental to LINX network or to the usage of LINX by other Members and/or Associate Members and shall, at all times, adhere to the Technical Requirements of LINX as detailed in Appendix 1 of LINX Memorandum of Understanding - See Clause 18 "References"

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- save that, in the event that the Associate Member is using a private autonomous system number for research or data collection and does no public routing, Clause 4.2 and 4.6 of Appendix 1 are waived. Non-compliance may lead to suspension or cancellation of Associate Membership in accordance with Clause 7 of this Agreement.
- 3.3 The Associate Member shall ensure that all contact information which is held by LINX in connection with their Associate Membership is correct and kept up-to-date, specifically:
- 3.3.1. The Associate Member shall provide 24x7 operational contact details for the use of LINX staff and other Members. The personnel available by this means shall understand the technical requirements of the LINX Memorandum of Understanding, as referenced in Clause 3.2 above, and shall be able to speak and understand spoken and written English or to have immediate access to other personnel who are able to speak and understand spoken and written English. Failure to provide this information may be regarded as "Non-Compliance" in accordance with Clause 7 of this document.
- 3.3.2. The Associate Member shall provide an email address for which requests for peering should be sent.
- 3.4 The Associate Member shall acknowledge receipt of a peering request made to the email address specified above, by any LINX Member and/or Associate Member, within 2 working days of the request. An auto-responder is considered acceptable. Failure to do so may be regarded as "Non-Compliance" in accordance with Clause 7 of this document. The Associate Member shall not refer their customers, or any agent of their customers, directly to LINX support staff unless specifically sanctioned by a member of LINX staff by email.
- 3.5. The Associate Member shall ensure that at least one member of their staff is subscribed to the following mailing lists:
- 3.5.1. <ops-announce@linx.net> which is intended to carry announcements of an urgent operational nature.
- 3.5.2. <mou-changes@linx.net> which is intended to notify relevant and authorised personnel of any changes to this document which shall have a binding affect on LINX Members and/or Associate Members.
- 3.7 LINX and all other Members and Associate Members are entitled to assume, and to act, as if each Member and Associate Member reads and appropriately deals with messages as sent to these lists. LINX may, for the protection of its own infrastructure, take such reasonable and proportionate action as is necessary if this is not the case.

4 RIGHTS OF ASSOCIATE MEMBERS

The Associate Member does not have ownership or voting rights. The Associate Member does however have the right to attend LINXs General Meetings (EGMs and AGMs) as an invited guest and be involved in debates regarding LINX and industry strategy where appropriate.

The Associate Member may also be involved in sub-committees and task groups which the LINX Council may set up from time to time.

5 DURATION

This Agreement will commence as of the Start Date and will continue until terminated by either party giving not less than three months written notice in accordance with clause 10.

6 TERMINATION

This Agreement may be terminated forthwith by written notice by either party in the following circumstances:

- 6.1 If either party commits any material breach of the terms of this Agreement and (in the case of a breach which is not persistent and which is capable of being remedied) has failed, within seven days after the receipt of a notice from the other to do so, to remedy the breach; or
- 6.2 if either party has a receiver or administrative receiver appointed over it or any part of its undertaking or assets or passes a resolution for winding up (except for the purposes of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if either party becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business.
- 6.3 in the event of non-compliance by the Associate Member as defined in Clause 7 of this document.

7 NON COMPLIANCE

- 7.1 Failure of the Associate Member to comply with the Technical Requirements outlined in Clause 3.2 or any other requirements of this document may result in sanction being taken against the Associate Member. Such sanction shall be at the sole discretion of the Council and may, depending on the severity of the incident, take the form of any or all of:
 - 7.1.1 Immediate disconnection from the Services pending resolution of the non-compliance by the Associate Member
 - 7.1.2 Suspension of Associate Membership with a view to Termination. This shall have the following effects:
 - 7.1.2.1 Suspension shall be immediately announced to membership.
 - 7.1.2.2 The Associate Member shall be disconnected from all Services while suspended.
 - 7.1.2.4 The Associate Member shall not be entitled to a refund for any Fees paid to LINX before the suspension and, if not terminated, shall still be required to pay any applicable Fees for the period of suspension.
 - 7.1.2.5 As part of the notice calling any General Meeting, the Board shall include a list of suspended associate members and/or members.
 - 7.1.3 Notification to LINX Membership of Associate Member Non-Compliance and subsequent action taken by LINX Council.
- 7.2 An Associate Member may appeal against the decision of the Council in respect of suspension of their Membership in accordance with LINX Appeal Procedure which is documented at <https://www.linx.net/private/members/procedures/appeal.shtml>
- 7.3 Any Associate Member whose membership to LINX has been terminated in accordance with Clause 7.1.2 above may reapply for LINX Associate Membership, however any approval to such application may be on such terms as LINX may at that time determine.

8 INSURANCE AND INDEMNITY

In the event of a claim made by either party, the maximum amount payable for whatever reason shall be limited to the amount of valid insurance available to a party for risks of that type. In the event that no insurance is available, the maximum amount payable for

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whatever reason shall be limited to GBP1,000 (one thousand great british pounds) per 12 month period from the Start Date.

Neither party shall be liable for any indirect, incidental, special, consequential, exemplary or punitive damages (including but not limited to, for loss of data, loss of profits or loss of revenues) and regardless of whether such party has been informed of the possibility or likelihood of such damages provided always that nothing in this Agreement shall operate so as to limit the liability of any party in respect of death or personal injury arising in respect of that parties negligence.

Associate Members shall not hold LINX liable for any loss whatsoever resulting from the illegal use or use not conforming to the terms of this MoU by another Member or an Associate Member.

If applicable, Associate Members shall arrange suitable insurance to cover their equipment while it is within the Rackspace. This should cover damage to the equipment howsoever caused (including damage by LINX or third party staff or equipment) and third party liability in the event of the Member's equipment causing damage to LINX or third party staff or equipment.

The Contracts (Rights Of Third Parties) Act 1999 shall apply to all memberships.

9 ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, arrangements and understandings between the LINX and the Associate Member and save in relation to the applicability of the documents referred to in clause 18 constitutes the entire agreement between them relating to the subject-matter of this Agreement. No addition to or modification of this Agreement will be binding upon the LINX or the Associate Member unless made in writing by authorised representatives of both parties.

10 NOTICES

Any document if served by electronic mail shall be deemed properly served if transmitted in legible form:

- a) in the case of service on the Associate Member by electronic mail to its electronic mail address _____@_____ or such other address as may be notified by the Associate Member to LINX from time to time.
- b) in the case of service on LINX by electronic mail to its electronic mail address ceo@linx.net or such other address as may be notified by LINX to the Associate Member from time to time.

11 HEADINGS

The headings to the clauses of this Agreement are for ease of reference only and do not affect the interpretation or construction of this Agreement.

12 LAW

This Agreement is governed by and is to be construed in accordance with the laws of England and the parties submit to the jurisdiction of the English Courts.

13 PUBLICITY

The Associate Member may mention LINX in press releases and publicity material provided that they shall not publish anything which is in any way damaging to LINX, its reputation, its Members and/or Associate Members. If in any doubt The Associate Member should first refer their proposed material to LINX Public Relations <pr@linx.net>.

LINX shall not publish any press releases regarding or referring to an Associate Member unless the text of such a press release has been cleared in writing by the Associate

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Member provided that at all times LINX may publish the names of Associate Members and refer to them as such.

The Council shall normally issue a joint press release with each new Associate Member upon their joining, subject to approval of both parties.

The Associate Member may use LINX Associate Member Logo (Schedule A) in publicity material and on their website and shall adhere to LINX Associate Member Identity Guidelines (Schedule A) for use of this mark. The Associate Member may not use any other LINX logo for the purposes of identifying themselves as a LINX Associate Member.

14 CONFIDENTIALITY

The Associate Member has a duty of confidentiality to the LINX. As such, all and any information, not already in the public domain, passed between LINX and The Associate Member shall at all times be kept confidential and shall not be passed or revealed to any third party outside of LINX, without the prior written consent of the party to which it relates.

15 UNSOLICITED BULK MESSAGING

LINX resources may not be used for unsolicited distribution of materials by the Associate Member when offering or promoting goods or services to Members and/or Associate Members.

16 CHANGES

This document, together with the reference documents listed in Clause 18 shall only be modified by Ordinary Resolution of LINX in General Meeting or by the authority granted by the Ordinary Resolution passed on 2001-02-27 permitting certain minor and consequential changes. Unless stated otherwise in the amending resolution, the change shall take effect, and where relevant be binding on existing Associate Members, from the end of the General Meeting which passes the resolution.

17 FORCE MAJEURE

- 17.1 In this Agreement, force majeure will mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to EITHER acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), failure, overload or perceived threat of overload of a utility service, infrastructure or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors OR war, civil war, armed conflict or terrorist attack, nuclear, chemical or biological contamination or sonic boom, but nothing else.
- 17.2 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that party will forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and will, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay and to clause 17.4, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 17.3 If either party is prevented from performance of its obligations for a continuous period in excess of one month, the other party may terminate this Agreement

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forthwith on service of written notice upon the party so prevented, in which case neither party will have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist

- 17.4 The party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of force majeure will use reasonable endeavours without hereby being obliged to incur any expenditure to bring the force majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the force majeure event.

18 REFERENCES

- 18.1 LINX Memorandum & Articles of Association :<http://www.linx.net/manda.html>
- 18.2 Appeals Procedure :<http://www.linx.net/joining/appeals.thtml>
- 18.3 LINX Memorandum of Understanding : <http://www.linx.net/joining/mou.thtml>

SCHEDULE A: LINX ASSOCIATE MEMBER LOGO AND CORPORATE IDENTITY GUIDELINES

A1 Logo for use with LINX Associate Membership



A2 Corporate Identity Guidelines

LINX Associate members, having met the conditions of this Agreement may use the logo as identified above for use in publicity materials, advertising and on their website.

This logo is issued in two different colour formats:

- Black and cyan LINX logo with cyan “Associate Member” underneath in Arial Bold using small capitals.
- Black and cyan LINX logo with black “Associate Member” underneath in Arial Bold using small capitals.

For dark backgrounds, the black colour contained within the LINX logo and the “Associate Member” wording can be made white.

Text

The following text can be used to accompany this logo. Please note that all text should be in Arial or Helvetica and should be placed either underneath the logo or to the right side of the logo (centred horizontally with the logo) . The text cannot be displayed in part.

“LINX Associate Member”

or

“Associate Member of London Internet Exchange Ltd. (LINX)”