DISPUTES RESOLUTION

linx

DISPUTES RESOLUTION

1. Advantage of Mediation

A satisfactory conclusion resulting from this dispute resolution procedure will avoid the referral of complaints to statutory regulators and demonstrate a regime of responsible industry self regulation.

If there are disputes regarding peering agreements related to traffic carried over LINX, or member bilateral aspects of the observance of the LINX Memorandum of Understanding, then a process in which the LINX executive facilitates settlement by a process of mediation, and assists parties in reaching agreement, will provide a good opportunity for arriving at a swift and mutually acceptable resolution.

Potential advantages are:

At the outset the mediator may decline the mediation and refer the matter to the Centre for Dispute Resolution (CEDR) if he or she feels that on balance resolution of the dispute would be more likely if handled outside LINX. However, if having elected for the LINX mediation procedure a resolution is not reached, the mediator will discuss with the parties whether there is any merit in trying a resolution through CEDR.

2. Process

2.1 The parties commence the LINX Dispute Resolution Procedure by signing a written agreement (the "Terms of Agreement"), the recommended form for which is attached as Appendix A. Each party and representative agrees in writing to all provisions of this procedure, as modified by agreement of the parties.

2.2 The mediator will be a LINX senior staff member or appointed representative. There may also be a student or pupil mediator as an observer.

2.3 If LINX is asked to do so by a party wishing to initiate a mediation, it will approach the other party(ies) to a dispute to seek to persuade it/them to participate.

2.4 Each party may withdraw at any time by written notice to the mediator and the other party or parties.

2.5 The mediator controls the procedural aspects of the mediation. The parties co-operate fully with the mediator and the parties endeavour to find a mutually acceptable resolution.

2.6 The mediator is free to meet and communicate separately with each party.

2.7 The mediator decides when to hold joint meetings with the parties and when to hold separate meetings. The mediator fixes the time and place of each session and its agenda in consultation with the parties. There is no formal written, audio or video records of any meeting. Formal rues of evidence or procedure do not apply.

2.8 Each party is represented at each mediation session by a business executive authorised to negotiate a resolution of the dispute and to execute a settlement agreement. Each party may be represented by more than one person, eg a business executive and a lawyer. The mediator may limit the number of persons representing each party.

2.9 The process is to be conducted expeditiously. Each representative undertakes to make every effort to be available for meetings.

2.10 The mediator does not transmit information received in confidence from any party to any other party or any third party, unless authorised to do so by the party transmitting the information, or unless ordered to do so by a court of competent jurisdiction or ruling of a statutory regulator.

2.11 The mediator may obtain assistance and independent expert advice to better understand the issues, with the prior agreement of and at the expense of the parties. Any candidate proposed as an independent expert will also be required to disclose any circumstances known to him or her that would cause reasonable doubt regarding the candidate's impartiality.

2.12 The mediator, LINX, and its employees, agents and partners shall not be liable for any act or omission in connection with the proceeding, other than as a result of its/his/her own wilful misconduct or gross negligence.

3. Exchange of Information

3.1 Each party shall produce the documents it relies on in the mediation and may but shall not be obliged to produce any further documents requested by the mediator or the other party.

3.2 At the conclusion of the mediation process, upon the request of a party which provided documents or other material to one or more parties, the recipients undertake to return them to the originating party without retaining copies thereof.

3.3 All documents and other information provided to a party in the course of a mediation shall be used by that party exclusively for the purposes of the mediation.

4. Preparation of Materials

4.1 Before dealing with the substance of the dispute the parties and the mediator discuss preliminary matters, such as possible modifications of the ground rules, place and time of meetings and each party's need for documents or other information in the possession of the other.

4.2 At least five business days before the first substantive mediation conference, unless otherwise agreed, each party submits to the mediator a written statement summarising the background and present status of the dispute and such other material and information as it deems helpful to familiarise the mediator with the dispute. The parties may agree to submit jointly certain other materials. The mediator may request any party to provide clarification and additional information. The mediator may limit the length of written statements and supporting material. The mediator may direct the parties to exchange concise written statements and other materials they submit to the mediator to further each party's understanding of the other party's viewpoints.

4.3 Documents and exhibits presented, if not in the language of the LINX dispute resolution procedure pursuant to Section 5 of the Terms of Agreement, will be accompanied by a translation into the language of the LINX dispute resolution procedure, unless the parties have agreed otherwise.

4.4 Except as the parties otherwise agree, the mediator keeps confidential to him/herself and the parties any written materials or information that are submitted to him or her. The parties and their representatives shall be entitled to receive or review any materials or information submitted to the mediator by another party or representative. At the conclusion of the mediation process, upon request of a party, the mediator without retaining copies returns to that party all written materials and information which that party had provided to the mediator.

5. Negotiation of Terms

5.1 The mediator may promote settlement in any manner the mediator believes is appropriate. The mediator helps the parties focus on their underlying interests and concerns, explore resolution alternatives and develop settlement options. The mediator decides when to hold joint meetings and when to confer separately with each party.

5.2 The mediator expects the parties to make settlement proposals.

5.3 Efforts to reach a settlement continue until (a) a written settlement is reached, or (b) the mediator concludes and informs the parties that further efforts would not be useful, or (c) all but one of the parties or the mediator withdraws from the process, or (d) the mediation has not been completed, or no settlement has been reach, within 30 business days. However, if there are more than two parties, the remaining parties may elect to continue following the withdrawal of a party.

6. Settlement

6.1 If a settlement is reached, the representatives of the parties draft a written settlement document incorporating all settlement terms, which may include mutual general releases from or discharges of all liability relating to the subject matter of the dispute. This draft will be circulated among the parties and the mediator, amended as necessary, and formally executed. Initially, a preliminary memorandum of understanding may be prepared at the mediation and executed by the parties; the memorandum should make it expressly clear whether it is intended to be binding or not.

6.2 Any litigation between the parties in any jurisdiction would be a bar to the LINX mediation procedure being invoked.

6.3 If litigation is commenced at any time in any jurisdiction by one party against the other then the mediation could, at the option of the mediator, be abandoned or suspended until such proceedings have been concluded.

7. Confidentiality

7.1 The parties agree that the mediation process, and all negotiations, statements and documents expressly prepared for the purposes of the mediation shall be “without prejudice”. The entire mediation process is confidential.

7.2 Unless agreed among all the parties or required by law or ordered by a court, the parties and the mediator may not disclose to any person any information regarding the process (including pre-process exchanges and agreements), contents (including written and oral information), settlement terms or outcome of the proceeding.

7.3 If litigation is pending, the participants may, however, inform the court of the schedule and overall status of the mediation for purposes of litigation management.

8. Costs

8.1 Save as expressly otherwise provided in this procedure, each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this procedure.

8.2 If a party withdraws from a multiparty mediation but the procedure continues, the withdrawing party will not be responsible for any costs incurred after it has notified the mediator and the other parties of its withdrawal.

8.3 The mediator's fees, calculated by cost recovery of their time and any incidental expenses, will be estimated before appointment. Those fees, and any other costs of the process, will be shared equally by the parties unless they otherwise agree.

9. Governing Law and Jurisdiction

9.1 The mediation agreement will be governed by, construed and take effect in accordance with English law. The courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation.

< >Advantage of Mediation Promptness and speed of resolution. Substantial savings in legal fees and other litigation expenses and in the time and energy of executives. Creative, business driven "win-win" solutions not available in a court of law. Solutions based on parties' real interests, not just legal positions. Preservation of the business relationship. Privacy and confidentiality. Parties of different nationalities often are reluctant to litigate or arbitrate in each other's country. They should be less reluctant to operate this procedure. Process Exchange of Information Preparation of Materials Negotiation of Terms Settlement Confidentiality Costs Governing Law and Jurisdiction

APPENDIX "A"

Recommendation Form of Mediation Agreement

THIS AGREEMENT is made between

(1) **THE LONDON INTERNET EXCHANGE LIMITED** of Trinity Court, Trinity Street, Peterborough PE1 1DA ("LINX")

(2) [ ] of

("Party A")

(3) [ ] of

("Party B")

(4) [ ] of

("The Mediator")

(5) [ ] of

("The Pupil Mediator")

MATTER

AGREEMENT

1. Party A and Party B (hereinafter referred to as "the Parties") agree to use their best endeavours to resolve the dispute by mediation and to the appointment

of [. . . . . .] as Mediator and [. . . . .] as Pupil Mediator

2. The Representatives of the Parties for the Mediation will be:

for Party A

(Advised by . . . . .)

And

for Party B

(Advised by . . . . . .)

3. The Representatives (or such other representatives as the Parties may from time to time appoint) will represent the respective Parties at the Mediation and will have full authority to settle the dispute

4. Prior to the Mediation both Parties will have submitted to the Mediator and will have exchanged copies of a written summary of their case and relevant background documentation

5. Procedure at the Mediation will be determined by the Mediator in consultation with the Parties

CONCLUSION OF THE MEDIATION

6. The Mediation will continue during the day(s) agreed until agreement is reached; or all but one of the Parties withdraws from the Mediation; the Mediation has not been concluded within 30 business days; or the Mediator is of the view that further efforts at mediation would not be worthwhile

SETTLEMENT

7.1	If an agreement is reached between the Parties, a Memorandum of Undertaking will if appropriate and required by the Parties be prepared and signed by the Parties. No agreement as to the terms of any settlement reached during the Mediation shall be legally binding unless and until it is reduced to writing and signed by the Representatives for and on behalf of the Parties. The Parties shall however be legally bound by any settlement so reduced in writing and signed and undertake to give effect to such settlement in accordance with its terms
7.2	If a Party fails to give effect to a settlement within the terms of clause 9.1 then the other Party or Parties shall be released form the terms of the settlement if they wish to do so upon giving written notice to the other Party or Parties
7.3	All Parties reserve their respective rights should the Mediation not

CONFIDENTIALITY

8.1 By taking part in the Mediation the Parties undertake to each other and agree that:

8.1.1	The entire Mediation is and will be kept confidential as between the parties and the Mediator;
8.1.2	The Parties, the Representatives and their advisers and the Mediator shall keep all statements and all other matters whether oral or written including any settlement agreement relating to the Mediation confidential except insofar as disclosure is necessary to implement and enforce such settlement agreement;
8.1.3	The entire process of the Mediation shall be treated as privileged and will be conducted on the same basis as without prejudice negotiation in an action in the courts (or similar proceedings). All documents submissions and statements made or produced for the purposes of the Mediation whether oral or written shall be admissible and not subject to discovery in any arbitration legal or other similar proceedings except that evidence which is otherwise inadmissible or discoverable shall not become inadmissible or non-discoverable by reason of its use in connection with this Mediation
8.2	The Mediator may not act for either Party individually in any capacity with regard to the subject matter of the Mediation and the Parties acknowledge that in acting under this agreement neither LINX nor the Mediator is representing or giving legal advice to, nor assessing, upholding or protecting (or attempting to assess uphold or protect) any rights of any of the Parties. The Parties are encouraged to take legal advice in respect to all matters pertaining to the Mediation and any agreement reached
8.3	Neither Party may have access to the Mediator's notes or call the Mediator as witness in any proceedings relating to any of the issues between them and the Mediator's opinion will be inadmissible in any subsequent proceedings which may take place between the Parties concerning the subject matter of the Mediation

COSTS

9. Unless the Parties otherwise agree, the fees and expenses of the Mediator as well as any other administrative expenses of the Procedure will be borne by the Parties in equal shares. Each Party will also pay its own expenses of individual representation in the Mediation. The costs and expenses of the Mediator are payable in advance. Such estimate may be revised in the event of any further meeting(s) or other services being required of the Mediator and in any event Parties will be invoiced in arrears for

any additional costs or expenses. In the event that the Parties settle the matter prior to the Mediation but after fees payable in advance have become due the Mediator will be entitled to keep his administrative fees and any irrecoverable expenses incurred.

EXCLUSION OF LIABILITY

10. Neither LINX nor any Mediator shall be liable to the Parties or any of them for any act or omission whatsoever in connection with the services to be provided by them other than in respect of wilful misconduct or gross negligence

11. In clauses 4, 10, 11, 12 and 14 of this Agreement the term "Mediator" shall be deemed to include the Pupil Mediator and those clauses will be construed and apply accordingly

12. This Agreement shall be governed by and construed in accordance with English law under the non exclusive jurisdiction of the English courts

Dated the . . . . . day of 20

SIGNED by	)
For and on behalf of LONDON INTERNET	)
EXCHANGE LIMITED	)
SIGNED by	)
For and on behalf of	)
SIGNED by	)
For and on behalf of	)
SIGNED by	)
The Mediator	)
SIGNED by	)
The Pupil Mediator	)