SPECIAL TERMS - Datacentre Active Fabric Access / Third Party Fabric

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SPECIAL TERMS
Members connecting through Datacentre Active Fabric Access

Words or phrases that start with a capital letter are defined in LINX's Membership Terms, in the Peering Bandwidth Service Terms, or in the glossary at the end of these Special Terms.

1. Introduction

1.1 These Special Terms apply as an amendment to the Membership Terms forming part of your LINX Membership Agreement and to the Peering Bandwidth Service Terms, and must be read in conjunction with those agreements.

2. Scope

2.1 These Special Terms apply to you only if:

2.1.1 you have obtained a connection to a Datacentre Active Fabric by separate agreement with the Datacentre; and

2.1.2 you make use of LINX services via that connection to the Datacentre Active Fabric, which is referred to in these terms as "Datacentre Active Fabric Access"

2.2 These Special Terms only amend the Membership Terms forming part of your LINX Membership Agreement and Service Terms in respect of services delivered over Datacentre Active Fabric. If you also receive LINX services via any other means of connection, these Special Terms shall not apply in respect of those services.

3. Amendments to the Membership Terms forming part of your LINX Membership Agreement

3.1 Clause 16.2 of the Membership Terms is replaced by the following:

16.2	Termination of Service Orders by LINX. LINX may terminate a Service Order:
	16.2.1 for any of the reasons given in clause 18.1 (Grounds for Suspension or Termination by LINX); or
	16.2.2 if clause 18.3 (Prolonged Force Majeure) applies;
	16.2.3 if for any reason the Datacentre ceases to provide or operate a Datacentre Active Fabric, or ceases to connect LINX to it; or
	16.2.4 in accordance with any additional termination rights set out in the Service Order (including relevant Service Terms).

3.2 A new clause 23A (Reliance on Datacentre Active Fabric) is added to the Membership Terms:

23A	**Reliance on Datacentre Active Fabric**
23A.1	**Responsibility for choice of Datacentre Active Fabric.** You acknowledge that you have chosen to receive LINX services via Datacentre Active Fabric Access, a third-party service that is beyond LINX's control. As a consequence, certain provisions of your LINX Membership Agreement shall be applied by reference to this context.
23A.2	**Network Performance and Demarcation.** Notwithstanding anything to the contrary in any agreement between you and LINX, LINX shall not be responsible for any loss or degradation in service quality to the extent that it is due to a lack of availability or any performance characteristics of the Datacentre Active Fabric. You acknowledge that, for the purposes of assessing the performance characteristics of any LINX service you use via Datacentre Active Fabric Access, including our compliance with any applicable law or regulation, the demarcation point between LINX and your network shall be the demarcation point between LINX's network and the Datacentre Active Fabric.
23A.3	**Good Industry Practice.** You acknowledge that LINX's provision of services to you relies upon Datacentre Active Fabric. References to "Good Industry Practice" within your LINX Membership Agreement and any applicable Service Terms shall be interpreted as meaning Good Industry Practice for a service delivered over a single connection third party fabric.

23A.4 **Monitoring Network Data.** You acknowledge that the Datacentre has the capability to monitor use of the Datacentre Active Fabric, including monitoring any traffic passed over Datacentre Active Fabric Access. Any monitoring by Datacentre is excluded from the scope of restrictions on monitoring set out in clause 23 of your LINX Membership Agreement.

23A.5 **Compliance with Datacentre policies.** You shall comply with any restrictions on use of the Datacentre Active Fabric binding upon you in your agreement with the Datacentre for use of the Datacentre Active Fabric. If LINX reasonably believes you have failed to comply with these restrictions on use, LINX may, at its option, suspend your use of Datacentre Active Fabric Access until such time as the Datacentre confirms to LINX you have remedied your non-compliance to its satisfaction. This shall be deemed to be a suspension of services under clause 15.1.3 of these Membership Terms, and you will still accrue any service fees that would otherwise be due to LINX during such suspension. LINX's failure to exercise this option promptly shall not waive LINX's right to suspend your use of Datacentre Active Fabric Access at a later time if you remain out of compliance with your agreement with the Datacentre or for any other reason permitted by these Membership Terms.

3.3 Clause 25.6 of the Membership Terms is replaced by the following:

25.6 **Exclusions of Liability (LINX)**. LINX will not be liable to you for any Losses you incur that result from:

25.6.1 any use of LINX services that is unlawful or does not comply with the relevant Service Terms;

25.6.2 your breach of your LINX Membership Agreement or a Service Order;

25.6.3 the conduct of any other LINX members;

25.6.4 any action, inaction or omission by the Datacentre; or

25.6.4 breach of obligations that you owe to your end customers or otherwise resulting from arrangements between you and your end customers.

3.4 The following is added to the glossary at the end of the Membership Terms:

Datacentre, Data Centre Active Fabric and **Datacentre Active Fabric Access** have the meanings given to them in the "Special Terms - Members connecting through Datacentre Active Fabric Access" forming part of your Service Order for the Peering Bandwidth service.

4. Amendments to the Peering Bandwidth Service terms

4.1 Clause 1.2 is replaced by the following:

1.2	The Peering Bandwidth service is a communications service that requires physical connectivity. You have elected to connect via Datacentre Active Fabric Access, which you have obtained by means of a separate agreement you have made directly with the Datacentre.

4.2 Clause 15 (Service Availability) is replaced by the following:

15	**Service Availability**
15.1	LINX will use commercially reasonable efforts to ensure that the Peering Bandwidth service is available 24 hours a day, 365 days a year in accordance with Good Industry Practice. You acknowledge that the service may be unavailable from time-to-time for reasons that could include, but are not limited to, equipment failure, planned maintenance, emergency maintenance, failure or non-availability of the Datacentre Active Fabric for any reason, and other causes beyond LINX's reasonable control.
15.2	The Peering Bandwidth service is not provided with a service level agreement or service credits as standard. Any service level commitments or related service credits must be agreed separately with LINX and may be subject to additional fees. Any service level commitments or related service credits otherwise agreed with LINX shall be calculated by disregarding any failure or loss of availability to the extent it is caused by the non-availability of the Datacentre Active Fabric for any reason.
15.3	Excepting maintenance windows planned by the Datacentre, LINX will notify you at least seven days before any planned maintenance windows. LINX will notify you if the Datacentre informs LINX of any planned maintenance that LINX considers likely to affect your service, within a reasonable period in relation to the amount of notice LINX is itself given. Either of these notices may be done by making a member announcement (as described in the LINX Membership Terms). LINX cautions you that the Datacentre is likely to notify LINX only of maintenance likely to affect LINX's connectivity over the Datacentre Active Fabric generally, and is unlikely to inform LINX of maintenance likely to affect your connectivity to Datacentre Active Fabric.

4.3 Clause 17 (Port Access Required) is replaced by the following:

17	**Datacentre Active Fabric Access Required**
17.1	As your Peering Bandwidth service is provided via Datacentre Active Fabric you should not cancel the Datacentre Active Fabric service from the Datacentre while the Peering Bandwidth service is live. If you do, you will be unable to use the Peering Bandwidth service, but will still be charged for it.
17.2	If your Datacentre Active Fabric Access becomes unavailable for any reason, then your Peering Bandwidth service assigned to the relevant Access Port will also not be available, but you will still be charged for it.

5. Glossary

Datacentre	means the operator of the datacentre providing you with access to Datacentre Active Fabric.
Datacentre Active Fabric	means any active platform interconnection solution provided within a datacentre, other than a LINX IXP, that is designed to enable on-demand direct access to your own end points and those of various third parties on that infrastructure.
Datacentre Active Fabric Access	refers to you connecting to a LINX IXP via a connection provided over Datacentre Active Fabric, as set out in clause 2.
Third Party Fabric	when mentioned in LINX marketing materials or on an Order Form, refers to Datacentre Active Fabric or Datacentre Active Fabric Access, as the context requires.