

AMS-IX B.V. GENERAL TERMS AND CONDITIONS

Version 2013

Article 1. Definitions

For the purpose of these AMS-IX General Terms and Conditions, the following terms shall have the following meanings:

- a. **AMS-IX Association:** the association 'Vereniging Amsterdam Internet Exchange', having its registered office in Amsterdam, The Netherlands;
- b. **AMS-IX B.V.:** Amsterdam Internet Exchange BV, having its registered office in Amsterdam, The Netherlands;
- c. **AMS-IX Company:** the party with whom Customer has executed the AMS-IX Connection Agreement, i.e. either AMS-IX B.V. or a third party appointed as a designated reseller by AMS-IX B.V.;
- d. **AMS-IX Connection Agreement:** the agreement between Customer and the AMS-IX Company, providing for Customer's connection to the AMS-IX Infrastructure for the location as specified therein, including any attachments thereto and including these AMS-IX General Terms and Conditions;
- e. **AMS-IX Infrastructure:** the Internet Exchange Infrastructure operated by AMS-IX B.V. consisting of metro networks that facilitate peering and IP traffic exchange between parties connected thereto for the location as specified in the AMS-IX Connection Agreement;
- f. **AMS-IX IP-address:** one or more IP-addresses, received by Customer for its own router per connection Customer has applied for, out of a dedicated address range reserved for the AMS-IX Infrastructure;
- g. **AMS-IX General Terms and Conditions:** these general terms and conditions, governing Customer's connection to the AMS-IX Infrastructure;
- h. **Assignment Date:** the date when AMS-IX Company communicates the connection details to Customer;
- i. **Co-location:** any physical location in which the AMS-IX Infrastructure is present;
- j. **Connection:** the physical connection of the router of Customer (directly or via a third party network) to the AMS-IX Infrastructure, also referred to as "Port";
- k. **Customer:** the party who has obtained connection to the AMS-IX Infrastructure through an AMS-IX Connection Agreement;
- l. **Production Date:** the date AMS-IX Company defines the connection in production in consultation with Customer.

Article 2. Applicability, Appendice

These AMS-IX General Terms and Conditions shall apply to all offers, agreements or other legal relationships pursuant to which the AMS-IX Company is providing, or offering to provide, a connection to the AMS-IX Infrastructure and/or related services or goods of whatever nature to the

Customer, in particular the AMS-IX Connection Agreement. Amendments or supplements to the AMS-IX Connection Agreement are valid only if agreed in writing, signed by both parties. In the absence of written agreement to the contrary between the parties, AMS-IX B.V. rejects the applicability of all general conditions other than its own.

Article 3. Object

3.1 AMS-IX Company will make and keep the Connection available to Customer, and Customer agrees to pay the price therefore, under the terms of the AMS-IX Connection Agreement. The obligations and responsibilities of the AMS-IX Company with regard to the Connection will not apply beyond the Service Demarcation point or patch at the Co-location as referred to in article 7.4 below.

3.2 Customer is responsible for arranging cross- connects between its equipment or that of a used third party transport network and the designated AMS-IX Infrastructure termination point (patch panel) in the co- location of choice. This responsibility may be carried out by a designated third party assigned by Customer.

3.3 Peering arrangements are not covered by these AMS-IX General Terms and Conditions or the AMS-IX Connection Agreement. The Customer is responsible for the negotiation, conclusion and implementation of peering arrangements with other users of the AMS-IX Infrastructure.

Article 4. Organizational Set-Up

4.1 Customer will appoint a Contractual Contact Person (CCP), a Customer authorized signatory.

4.2 Customer will appoint a Technical Contact Person (TCP) who will function as contact person with respect to all technical matters relating to the Connection.

4.3 Customer will appoint a Network Operations Contact (NOC) with respect to operational and emergency matters relating to the Connection. Customer warrants that the NOC can be reached 24 hours per day, 7 days per week through one point of contact.

4.4 Customer will appoint an Administrative Contact Person (ACP) who will function as contact person with respect to all administrative and financial matters relating to the Connection.

4.5 Customer is obliged to keep the contact information under this article 4 up to date.

Article 5. Rates and Payment

5.1 Customer agrees to pay the price for the Connection or other services rendered as specified in the AMS-IX Connection Agreement (including additional future order-forms) or as otherwise agreed with the AMS-IX Company.

5.2 The price shall be periodically invoiced to Customer and shall be due as of the Production Date, with a maximum of 30 days after Assignment Date or as otherwise agreed in writing between Customer and the AMS-IX Company.

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5.3 Invoices shall be sent in the first month of the period concerned in accordance with the AMS-IX Connection Agreement or as otherwise agreed in writing between Customer and the AMS-IX Company.

5.4 Payment must be made within 30 days of the invoice date or as otherwise agreed in writing between Customer and the AMS-IX Company.

5.5 The AMS-IX Company reserves the right to periodically re-assess and re-establish the price of the Connection. Upward price changes shall be made public at least three (3) months prior to a change. Downward price-changes may be applied instantly.

Article 6. Term and Termination

6.1 The AMS-IX Connection Agreement shall come into force on the date of its signing by both parties and shall remain in force until its termination in accordance with this article 6.

6.2 The AMS-IX Connection Agreement can be terminated at any time by any of the parties by means of a written notice by a registered contact (as set out in article 4.1 or 4.4 above) to the other party. The termination is effective as of the end of the calendar quarter in which the other party received said written notice.

6.3 Each of the parties is at any time entitled to terminate the AMS-IX Connection Agreement by means of a written notice to the other party:

- if the other party, after an appropriate written default notice and the lapse of a reasonable term for remedy, is in breach with one or more of its obligations (specifically but not limited to articles 5.1, 5.4 and 7.1, 7.2, 7.4, 7.5, 7.6 of these AMS-IX General Terms and Conditions), the party whose breach caused such termination is liable towards the other party for damages, suffered by such party as a result of such breach and termination, within the limits however of article 8 below;
- If the other party is dissolved ("ontbonden"), has stopped its activities, is declared bankrupt or applies for a general suspension of payments ("surséance van betaling").

6.4 Any termination is effective only for the future and entails no obligation for the parties to return or refund any benefits received until the moment of termination. Upon termination of the AMS-IX Connection Agreement AMS-IX Company will immediately terminate the availability for Customer of the AMS-IX IP-address(es) Customer was assigned under the agreement.

Article 7. Use and Limitations

7.1 Customer is entitled to use the Connection for its normal business purposes. Customer's rights under the AMS-IX Connection Agreement are non-exclusive. Customer is not entitled to assign and/or sublicense any of its rights under the AMS-IX Connection Agreement, or make the Connection available, to any third party unless it has signed a reseller or reseller plus agreement or other type of contract with AMS-

IX B.V. which allows it to do so.

7.2 AMS-IX Company is not obliged to make or keep the Connection available for Customer if:

- no valid AMS-IX Connection Agreement exists between the parties;
- Customer does not have at its disposal an Autonomous System Number (ASN), assigned by an official assigning Authority.

7.3 Customer agrees to exchange traffic through the AMS-IX Infrastructure only when there is a bilateral agreement to exchange traffic between Customer and the other individual Customers on the AMS-IX Infrastructure.

7.4 AMS-IX Company shall provide all reasonable care, skill and diligence to ensure that the Connection functions in accordance with the operational and functional specifications in the Service Description, available on the website of that Co-location as established and adapted from time-to-time by AMS-IX B.V., provided that Customer warrants a 24 hours per day reachability and has appointed a NOC as set forth in article 4.3 above.

7.5 Customer is solely responsible that its use of the Connection does not cause or is likely to cause any damage, or is in any other way harmful, to the AMS-IX Infrastructure, to AMS-IX Company, to the AMS-IX Association or to the normal operation, availability or functionality of the Connection and/or the Co-location or to the traffic exchanged. Specifically, the Customer will adhere to the restrictions relating to Allowed Traffic (<http://www.ams-ix.net/allowed-traffic/>)

7.6 Customer agrees to implement any reasonable measures that AMS-IX Company may propose in order to prevent or repair such damage or harm as described in article 7.5.

7.7 AMS-IX Company is entitled to (a) suspend or (b) discontinue the Connection, in whole or in part, and/or (c) to require that certain conditions be met before continuation thereof, if:

- Customer is infringing article 7.5 or 7.6 above and Customer has not, after a written warning from the AMS-IX Company, implemented adequate measures to prevent or repair such infringement;
- such is necessary for AMS-IX Company or AMS-IX Association to comply with a statutory obligation or a judicial decision;
- such is necessary in the view of AMS-IX Company or AMS-IX Association for the operation of the AMS-IX infrastructure, in accordance with article 7.5 above;
- AMS-IX Company or AMS-IX Association has received a claim as referred to in article 7.8 below, or
- Customer is in breach of one or more of its essential obligations under the AMS-IX Connection Agreement.

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7.8 Customer shall indemnify AMS-IX Company and the AMS-IX Association and hold them harmless from any and all damage and costs they might suffer or incur as a result of a claim of a third party that information, exchanged on the AMS-IX Infrastructure through the Connection of Customer, would be violating Dutch or foreign statutory rules, rules of public order or decency or rights of third parties.

Article 8. Liability

8.1 Parties will not be liable towards one another for compensation of indirect or consequential damage, including lost profits and damage consisting of or resulting from loss of data or information.

8.2 Any liability of AMS-IX Company towards Customer for compensation of damages resulting from AMS-IX Company's performance or non-performance of the AMS-IX Connection Agreement is at all times limited to the total amount of fees paid by Customer to AMS-IX Company under that agreement over the twelve (12) months, preceding the event (or, in case of a series of events: the occurrence of the first events of such a series) that caused such damages.

8.3 Any liability of Customer towards AMS-IX Company for compensation of material damage to the physical components belonging to the Connection resulting from Customer performance or non-performance of the AMS-IX Connection Agreement, is limited to the total amount of fees paid by Customer to AMS-IX Company under that agreement over the twelve (12) months, preceding the event (or, in case of a series of events: the occurrence of the first event of such a series) that caused such damages.

8.4 The limitations as set forth in article 8.2 and 8.3 above do not apply to damage that is caused by gross negligence or by harmful or criminal intent of a party or its senior management.

Article 9. Confidentiality

9.1 AMS-IX Company shall treat as confidential

all information classified as such by Customer of which it has learned by virtue of the performance of activities under the

AMS-IX Connection Agreement.

9.2 Customer shall treat as confidential all information classified as such by AMS-IX Company of which it has learned by virtue of the performance of activities under the AMS-IX Connection Agreement.

9.3 Parties undertake to include in contracts with third parties the obligation to take such measures to maintain confidentiality with respect to confidential information in the above-mentioned sense of the other party.

Article 10. Governing Law, Disputes

10.1 All contracts between AMS-IX Company and Customer, including the Connection Agreement, shall be governed by the laws of the Netherlands. Any dispute with regard thereto will be brought exclusively before the competent court of law of Amsterdam, The Netherlands.

10.2 The AMS-IX Connection Agreement contains all the terms which the parties have agreed in relation to the subject matter thereof and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such subject matter.

10.3 The English text of the AMS-IX Connection Agreement and of these AMS-IX General Terms and Conditions is the only valid and legally binding text thereof. Any translation of such documents, whether or not made or provided by the AMS-IX Company, is solely for the convenience of Customer.

Article 11. Amendment to these conditions

11.1 AMS-IX B.V. is authorized to make modifications and/or additions to these AMS-IX General Terms and Conditions. The amended conditions will come into effect on the stipulated commencement date. If no commencement date has been communicated, the amendments will come into effect in relation to the contracting party as soon as the contracting party is notified of the amended conditions. Such notification may be done by posting the amended conditions on the website of AMS-IX.