

## AMS-IX HONG KONG TERMS AND CONDITIONS

Version: October 2013

### 3.

#### Article 1. Definitions

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

- a. **AMS-IX B.V.:** Amsterdam Internet Exchange BV, having its registered office in Amsterdam, The Netherlands;
- b. **AMS-IX Reseller:** the party with whom Customer has acquired the Service, i.e. a third party appointed by AMS-IX B.V. as a designated reseller;
- c. **AMS-IX Hong Kong Infrastructure:** the Internet Exchange Infrastructure, which is a (metro) network in Hong Kong that facilitates peering and IP traffic exchange between parties connected thereto;
- d. **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 Hong Kong Infrastructure;
- e. **AMS-IX Hong Kong Terms and Conditions:** these Hong Kong terms and conditions, governing Customer's connection to the AMS-IX Hong Kong Infrastructure;
- f. **Assignment Date:** the date when AMS-IX Reseller communicates the connection details to Customer;
- g. **Co-location:** any physical location in which the AMS-IX Hong Kong Infrastructure is present;
- h. **Connection:** the physical connection of the router of Customer (directly or via a third party network) to the AMS-IX Hong Kong Infrastructure, at times also called "Port";
- i. **Customer:** the party who has obtained connection to the AMS-IX Hong Kong Infrastructure under the Service;
- j. **Production Date:** the date AMS-IX Reseller defines the connection in production in consultation with Customer;
- k. **Service:** the Connection provided by the AMS-IX Reseller;
- l. **Service Order:** the Order Form for the Service between the Customer and the AMS-IX Reseller.

#### Article 2. Applicability, Appendice

These AMS-IX Hong Kong Terms and Conditions shall apply to all offers, agreements or other legal relationships pursuant to which the AMS-IX Reseller is providing, or offering to provide, a connection to the AMS-IX Hong Kong Infrastructure and/or related services or goods of whatever nature to the Customer, in particular the Service.

#### Article 3. Object

**3.1** AMS-IX Reseller will make and keep the Connection available to Customer, and Customer agrees to pay the price therefore, under the terms of the Service Orders. The obligations and responsibilities of the AMS-IX Reseller with regard to the Connection will not apply beyond the Service Demarcation point or patch at the Co-location as referred to (through the Service Description URL) 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 Hong Kong 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 Hong Kong Terms and Conditions. The Customer is responsible for the negotiation, conclusion and implementation of peering arrangements with other users of the AMS-IX Hong Kong 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 and to immediately inform in writing AMS-IX Reseller of any changes.

#### Article 5. Rates and Payment

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

**5.2** The AMS-IX Reseller reserves the right to periodically re-assess and re-establish the price of the Connection. AMS-IX Reseller will notify the Customer of any change in price before such change takes effect. If Customer continues using the Connection, the change in price is deemed to be accepted by the Customer.

**5.3** Invoices shall be sent in the first month of the period concerned in accordance with the AMS-IX Hong Kong Terms and Conditions and the Service Orders or as otherwise agreed between Customer and the AMS-IX Reseller.

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

## Article 6. Term and Termination

**6.1** Unless otherwise stated in the Service Order, the Service Order 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** Each of the parties is at any time entitled to terminate the Service Order 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 Hong Kong 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").

**6.3** Unless otherwise stated in the Service Order, the Service Order shall continue until the expiry of minimum period set out therein ("Term"). Thereafter, it shall automatically renew for additional successive renewal terms (each of which being of the same length as the Term) unless terminated by either party by providing to the other party no less than thirty (30) days written notice of termination prior to the end of the Term or the then-current renewal term, as applicable (unless otherwise stated in the Service Order). All terms and conditions in effect as of the last day of the initial Term or any applicable renewal Term shall apply to the subsequent renewal Term.

**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 Service Order, AMS-IX Reseller 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 these AMS-IX Hong Kong Terms and Conditions and Service Order are non-exclusive. Customer is not entitled to assign and/or sublicense any of its rights under the Service Order, or make the Connection available, to any third party unless it has signed a reseller agreement or other type of contract with AMS-IX B.V. which allows it to do so.

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

- no valid Service Order 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 Hong Kong Infrastructure only when there is a bilateral agreement to exchange traffic between Customer and the other individual Customers on the AMS-IX Hong Kong Infrastructure.

**7.4** AMS-IX Reseller 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 (<http://www.ams-ix.hk/sd>) 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 Hong Kong Infrastructure, to AMS-IX Reseller 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.hk/allowed-traffic/>)

**7.6** Customer agrees to implement any reasonable measures that AMS-IX Reseller may propose in order to prevent or repair such damage or harm.

**7.7** AMS-IX Reseller 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 Reseller, implemented adequate measures to prevent or repair such infringement;
- such is necessary for AMS-IX Reseller or AMS-IX B.V. to comply with a statutory obligation or a judicial decision;
- such is necessary in the view of AMS-IX Reseller or AMS-IX B.V. for the operation of the AMS-IX Hong Kong Infrastructure, in accordance with article 7.5 above;
- AMS-IX Reseller 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 these AMS-IX Hong Kong Terms and Conditions or the Service Order.

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

## Article 8. Liability

**8.1** To the extent permitted by law, and also with regard to the parties' liability for auxiliary persons, the 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 parties to one another for compensation of damages directly resulting from the others performance or non-performance of the Service Order and these AMS-IX Hong Kong Terms and Conditions is at all times limited to the total amount of fees paid by Customer to AMS-IX Reseller 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** The limitations as set forth in article 8.2 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 Reseller shall treat as confidential all information classified as such by Customer of which it has learned by virtue of the performance of activities under these AMS-IX Hong Kong Terms and Conditions and the Service Order.

**9.2** Customer shall treat as confidential all information classified as such by AMS-IX Reseller of which it has learned by virtue of the performance of activities under these AMS-IX Hong Kong Terms and Conditions and the Service Order.

**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 Reseller and Customer including the Service Order, shall be governed by the substantive laws of Switzerland. Any dispute arising out of or in connection with the Service Order will be brought exclusively before the competent court of law of Zurich, Switzerland.

**10.2** These AMS-IX Hong Kong Terms and Conditions and the Service Order 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 these AMS-IX Hong Kong 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 Reseller, 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 Hong Kong Terms and Conditions. AMS-IX Reseller will notify the Customer of any modifications and/or additions to these AMS-IX Hong Kong Terms and Conditions before the change and/or addition takes

effect. 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 upon notification. Such notification may be done by posting the amended conditions on the website of AMS-IX Hong Kong and/or by emailing the amended conditions to the CCP and/or ACP. If Customer continues using the AMS-IX Hong Kong Infrastructure and related services, the modifications and/or additions are deemed to be accepted by the Customer.