

AMS-IX RESELLER AGREEMENT

Agreement Number: RA2010/....
Dated:

THE UNDERSIGNED:

Amsterdam Internet Exchange B.V., a company existing under the laws of The Netherlands, having its registered office at Westeinde 12 (1017 ZN) Amsterdam, The Netherlands (hereinafter: "AMS-IX"), duly represented by its Chief Executive Officer, Job Witteman;

and

/.../, a company existing under the laws of /.../, having its registered office at /.../ (hereinafter: "Reseller"), duly represented by, its

WHEREAS:

- A. AMS-IX is a company that facilitates the exchange of Internet transactions and everything that contributes hereto in the broadest sense of the word;
- B. Reseller is a company that **[describe type of service]**
- C. The Parties have agreed that AMS-IX will appoint Reseller as a reseller of the connection through the AMS-IX infrastructure under the terms of this agreement;

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purpose of this agreement, the following terms shall have the following meanings:

- a. **AMS-IX Connection Agreement:** the agreement providing for Customer's right to receive the IX Services, according to the model, attached as **Appendix V**.
- b. **AMS-IX Connection Conditions:** the general terms and conditions of AMS-IX regulating Customer's right to receive the IX Services, of which the now actual version is attached as **Appendix VI**; these conditions may be changed by AMS-IX from time to time.
- c. **AMS-IX Infrastructure:** the Amsterdam Internet Exchange Infrastructure, which is a metro network in Amsterdam that facilitates peering and IP traffic exchange between parties connected thereto.
- d. **Association:** the association 'Vereniging Amsterdam Internet Exchange', having its registered office in Amsterdam, The Netherlands.
- e. **Billing Services:** all activities towards Customer by Reseller regarding invoicing of the IX Services and collection of outstanding Customer invoices.
- f. **Customer:** any third party that receives IX Services via Reseller from AMS-IX on the basis of a validly agreed AMS-IX Connection Agreement.
- g. **IX Services:** the service of providing access to the AMS-IX Infrastructure.
- h. **Marketing Effort:** any activity by a Party that is directed at eventually selling IX Services under this Agreement.
- i. **Other Services:** additional services offered by Reseller to Customers, such as co-location services, transit services, consulting, project management, implementation, network management or any other service, related to the IX Services.
- j. **Production Date:** the date AMS-IX Company declares after consultation with Reseller that the Reseller Port (or, after consultation with the Customer, that the Customer's individual connection to the AMS-IX Infrastructure) is available for operational use.
- k. **Reseller Port:** an access port to the AMS-IX Infrastructure of at least 10Gigabit Ethernet that is made available exclusively to Reseller for reselling the IX Services to its Customers, the service description of which is attached as **Appendix III**.
- l. **Support Services:** all services provided to Customer by Reseller or AMS-IX related to Customer's use of the IX Service, as described in **Appendix I**.
- m. **Trademark:** the trademarks owned by AMS-IX or its licensors described in **Appendix VII**.

Article 2 Scope

2.1 AMS-IX will make one or more Reseller Ports available to Reseller and AMS-IX hereby grants Reseller, as Reseller accepts from AMS-IX, a non-exclusive, non-transferable right to resell the IX Services to Customers, which right is always subject to the condition that (i) Reseller has fulfilled all its (payment) obligations under this Agreement and that (ii) the Customers have entered into an AMS-IX Connection Agreement, prior to the use of the IX Services. This right is conferred only to the legal entity identified as 'Reseller' above and cannot be extended, transferred or sublicensed to any other entity or third party (including entities belonging to the same group as Reseller) without previous written consent of AMS-IX.

2.2 AMS-IX hereby grants Reseller, as Reseller accepts from AMS-IX, a non-exclusive, non-transferable right to use the Trademarks, exclusively to execute this Agreement and to promote the IX Services. The license also applies to any future trademark to which AMS-IX is entitled, from the date that AMS-IX has informed Reseller in writing that the license is extended to such trademark. Reseller is not entitled to register the Trademark in its own name or to use 'AMS-IX' as (part of) its trade name; the same applies to signs that are similar to the Trademark.

Article 3 Acceptance of orders

3.1 Prior to entering in any AMS-IX Connection Agreement with a Customer, Reseller will provide AMS-IX (by using the application form that is made available by AMS-IX for that purpose) with all such information regarding the intended Customer, including technical details, as AMS-IX requires in order to evaluate whether the application of Customer can be accepted. Submitting this form does not yet constitute placing the order: the order is placed when AMS-IX has received an original copy of the AMS-IX Connection Agreement, signed by both Reseller and Customer. AMS-IX shall inform Reseller within a reasonable period from receipt of that copy of its acceptance or rejection of the order.

Article 4 AMS-IX' obligations

4.1 AMS-IX agrees to actively name Reseller as partner including naming the categories of the Other Services offered by Reseller, and forwarding potential leads, notwithstanding the fact that the foregoing will not create or imply any exclusivity in this respect.

4.2 Without prejudice to article 3.1, AMS-IX will instruct Reseller such that Reseller will be able to sell IX Services independently:

- a) Upon entering this Agreement and periodically AMS-IX will provide Reseller, if so desired, at no charge, with sales training regarding IX services;
- b) AMS-IX will provide access to the AMS-IX partner program portal (www.ams-ix.net/members/partners and my.ams-ix.net) were all necessary documentation and interfaces with AMS-IX exist to carry out the execution of this Agreement.

4.3 AMS-IX will provide second line Support Services for IX Services during AMS-IX normal business hours (9:00 to 18.00 CET Monday through Friday excluding Public Holidays) to Reseller or Customer after careful screening of the issue by Reseller as meant in **Appendix I**. Outside those hours only emergency Support Services are offered by AMS-IX.

4.4 AMS-IX will keep Reseller updated on maintenance and network issues via the regular channels for purpose of Customer Support Services. AMS-IX shall provide Reseller with all necessary written information needed by Reseller for carrying out its obligations under the Agreement.

4.5 If AMS-IX expects that its capacity of supply will be significantly lower than that which Reseller could normally expect, AMS-IX will inform Reseller within a reasonable time.

4.6 AMS-IX may, at its sole discretion, on request of Reseller support Marketing Efforts to stimulate the sales of IX Services. However, this will not represent a financial sponsoring but could be the supply of material or the presence of AMS-IX representatives at functions of Reseller.

Article 5 Reseller's obligations

5.1 Reseller is only entitled to provide the IX Services to Customers who have signed the AMS-IX Connection Agreement and accepted the AMS-IX Connection Conditions and have thereafter received confirmation of the acceptance of their connection and their acceptance as a member of the Association. Reseller is not entitled to enter into any contractual relationship with any Customer regarding provision of the IX Services unless (i) it has previously provided the Customer with a copy of the then actual AMS-IX Connection Conditions and (ii) the agreement is made in writing and according to the attached AMS-IX Connection Agreement.

5.2 Reseller agrees to use his best endeavours to promote the sale of the IX Services in accordance with AMS-IX' reasonable instructions and shall protect AMS-IX' interests with the diligence of a responsible businessman.

5.3 Reseller agrees to actively include, specify and recommend IX Services and AMS-IX, where business and membership conditions indicate that a favourable response will be forthcoming and where technically feasible, in its Marketing Efforts to its customers. When negotiating with customers, Reseller shall offer the IX Services strictly in accordance with the terms and conditions of the AMS-IX Connection Agreement including the AMS-IX Connection Conditions.

5.4 Reseller will provide Customer with first line Support Services during Reseller's normal business hours as meant in **Appendix I**. Outside those hours, Reseller is only required to provide emergency Support Services.

5.5 Reseller shall exercise due diligence to keep AMS-IX informed about its activities, market conditions and the state of competition. Reseller shall answer any reasonable request for information made by AMS-IX.

5.6 Reseller shall immediately inform AMS-IX of any observations or complaints received from Customers in respect of the IX Services. The Parties hereto shall deal promptly and properly with such complaints.

Article 6 Price and payment

6.1 AMS-IX will invoice Reseller collectively, and Reseller will pay AMS-IX, for all IX Services rendered through this Agreement. The Reseller will make a choice for one of the pricing models as described in **Appendix IV**, which choice will be applicable for a minimum period of 24 months from the Production Date of the first Reseller Port and will apply also to any subsequent Reseller Ports ordered during that period. After that period the Reseller may change his choice to another pricing model as described in **Appendix IV**, provided that a chosen pricing model will remain applicable for at least 12 months and will apply to all Reseller Ports. If and insofar as the price is dependent on the IX Services actually being sold to and/or used by Reseller's Customers, such (part of the) price can be invoiced by AMS-IX from the Production Date for the relevant Customer(s).

6.2 AMS-IX will invoice Reseller periodically in Euros according to the rates as set by the Association.

6.3 AMS-IX may periodically re-assess and re-establish the price and/or pricing model(s) in accordance with the Long Term Commercial Strategy as established and adapted from time –to time by the General Meeting of the AMS-IX Association. The changes made to the price and/or pricing model will become applicable after three months from the moment that Reseller was informed in writing about the relevant decision of the AMS-IX Association or about the change of price and/or pricing model, or at such time at a later date if so stated in the communication.

6.4 Payment by Reseller must be made within 1 month of the invoice date.

6.5 In the event that Reseller fails to pay the amounts due within the agreed period, legal interest shall be due by Reseller on the outstanding amount without any notice of default being required. Should Reseller, after notice of default, fail to settle the claim, the same may be placed out of hand, in which case Reseller shall be liable to pay in full, in addition to the total amount then due, reasonable legal expenses relating to the collection of this claim or other enforcement of rights, the amount of which is determined in conformity with the guidelines for the Dutch Bar Association.

6.6 In the event that Reseller, after notice of default, fails to pay the amounts due, AMS-IX has the right to (i) inform Customers introduced and/or recommended by Reseller about this default of payment and to (ii) inform these Customers about the possibility to enter into a Connection Agreement with another partner or directly with AMS-IX.

6.7 Reseller is free to determine the prices it will charge to its Customers. Reseller will invoice the Customers for all costs arising out of the Connection Agreement, and is solely responsible for collection of the amounts due.

6.8 In case of non-payment by Customer to Reseller, Reseller is entitled to ultimately require a shut down procedure as referred to in **Appendix II**.

Article 7 Term, termination and the consequences thereof

7.1 This 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 7.

7.2 This Agreement is entered into for an indefinite period of time. This Agreement may be terminated by either Party for convenience (i.e. for any reason it deems fit) at any moment after (but not before) this Agreement has been in force for least two (2) years. Any such termination requires a prior written notice to the other Party, observing a notice period of at least two (2) calendar months; this means that the Agreement will remain in full force until the end of such notice period and will then cease to have effect..

7.3 This Agreement can be terminated with immediate effect in case:

- a) of default in the performance of any provision of this Agreement, after the non-defaulting Party has issued a written notice to the defaulting Party and the default is not cured within a reasonable period;
- b) Reseller changes ownership or a substantial amount of its share capital is acquired by a competitor of AMS-IX, as reasonably determined by AMS-IX;
- c) Reseller sells all or a substantial part of its assets, participates in a merger, or other reorganisation in which it is not the surviving entity; or
- d) Reseller ceases to do business (*"ontbonden"*), becomes unable to pay its debts when they fall due, becomes or is deemed insolvent (*"surséance van betaling"*) or bankrupt, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), enters into liquidation whether compulsory or voluntary.

7.4 Upon expiry of this Agreement, cancellation or termination for any reason:

- a) all rights granted to Reseller under this Agreement shall cease;
- b) Reseller shall cease all activities authorised by this Agreement;
- c) Parties shall immediately pay to each other any sums due to the other Party under this Agreement.

7.5 Upon expiry, cancellation or termination of this Agreement Reseller shall return to AMS-IX all advertising material and other documents and samples that have been supplied by AMS-IX and are in Resellers possession.

7.6 On expiry, termination or cancellation of this Agreement, AMS-IX can in mutual agreement with Customer take over the Support Services and Billing Services Reseller offered to Customer in relation to the IX Services.

Article 8 Confidentiality

8.1 During the course of the Agreement, each Party may be given access to information (verbally or in writing, in hardcopy and/or electronic form) that relates to the other's past, present and future business activities, research, development, products, services, and technical knowledge, and is identified by the discloser as confidential ("Confidential Information").

8.2 Parties agree:

- a) to hold the Confidential Information in strict confidence;
- b) not to disclose the Confidential Information to any third party, except as specifically authorized herein or as specifically authorized by the disclosing Party in writing;
- c) to use all reasonable precautions, consistent with the receiving Party's treatment of its own confidential information of a similar nature, to prevent the unauthorized disclosure of the disclosing Party's Confidential Information;
- d) not to use any Confidential Information for any other purpose than in connection with the Agreement; and
- e) not to use the Confidential Information for other personal gain.

8.3 Confidential Information may not be disclosed to any other person without explicit written approval of the disclosing Party, except to the extent that the same:

- a) can be shown by written evidence to have been known by the receiving Party prior to its receipt from the disclosing Party;
- b) is or becomes generally known to the public domain, through no fault of the receiving Party;
- c) is disclosed to the receiving Party by a third party not under any obligation to secrecy to the disclosing Party concerning the same and having a bona fide right to do so; or
- d) is developed by the receiving Party independently of any information received from the disclosing Party.

8.4 All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (a) the cancellation of the Agreement or, (b) on the request of the Party that disclosed the confidential information to the other Party, unless the receiving Party is otherwise lawfully allowed to retain such Confidential Information.

Article 9 Liability

9.1 None of the Parties will be liable towards the other Party for compensation of indirect or consequential damage, including lost profits and damage consisting of or resulting from loss of data or information.

9.2 Any liability of either Party towards the other Party for compensation of direct damage resulting from performance or non-performance of this Agreement is at all times limited to the total amount of fees paid by that other party to the liable party under this Agreement for the twelve (12) months, preceding the event that caused such damages.

9.3 In no event shall a Party's total liability for any loss by death or bodily injury or for any material damage to property exceed € 2,500,000 (two and a half million Euros) per event.

9.4 The maximum amounts specified in articles 9.2 and 9.3 shall cease to apply if and insofar as the loss is due to AMS-IX' or Reseller's wilful intent or gross negligence.

9.5 The Parties' liability for compensation of indirect or consequential damage or losses, including loss of profits, lost savings, loss caused by interruption of operations, damage resulting from loss of data or information or any other damage than direct damage as referred to in article 9.2, is expressly and entirely excluded.

9.6 In the meaning of this article 9 a series of connected events is being considered a single event.

Article 10 Relationship of Parties

10.1 Parties are and will remain independent contractors towards third parties and this Agreement shall not create any employment, franchise, joint venture or other similar legal relationship between Parties. Neither Party will obtain any right or authority to act on behalf of the other as a result of executing this Agreement other than expressly granted hereunder and neither Party shall represent that it has such right or authority, unless such right has expressly been granted to it under this Agreement or otherwise.

10.2 The existence of this Agreement shall not oblige any Party to any investment, expenditure or allocation of labour or capital in any form, other than expressly provided for in this Agreement.

10.3 The relationship of Parties is non-exclusive and shall not prohibit the Parties to enter into similar relationship with third parties, regardless of their position towards the other Party to this Agreement.

Article 11 General

11.1 Parties shall be at liberty, after mutual consultation, to issue a press release or other public announcement concerning their entering into this Agreement, but shall take account of any reasonable requirements of the other Party as to the content, timing and manner thereof.

11.2 This Agreement contains all the terms, which the parties have agreed in relation to the subject matter of this Agreement, and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such subject matter.

11.3 No addition or modification to this Agreement shall be valid unless made in writing and signed by the authorized representatives of both parties.

11.4 This Agreement cannot be assigned without prior written agreement between the Parties.

11.5 This agreement shall be governed by Dutch Law. Any dispute with regard hereto will be brought exclusively before the competent court of law of Amsterdam, The Netherlands.

IN WITNESS OF WHICH the parties have signed this Agreement in duplicate,

at (place)
..... 20.... (date)

at (place)
..... 20.... (date)

..... (signature)
AMSTERDAM INTERNET EXCHANGE B.V.

..... (signature)
Reseller NAME

List of Appendices:

- Appendix I: Support Services provided towards Customer by Reseller or AMS-IX
- Appendix II: Disabling & forced termination for Reseller Program
- Appendix III: Service Description Reseller Port
- Appendix IV: Price Models AMS-IX Reseller Program
- Appendix V: AMS-IX Connection Agreement (for use by Reseller)
- Appendix VI: AMS-IX Connection Conditions
- Appendix VII: Trademarks



APPENDIX I
to
AMS-IX RESELLER AGREEMENT

Support Services provided towards Customer by Reseller or AMS-IX



APPENDIX II
to
AMS-IX RESELLER AGREEMENT

Disabling & forced termination for Reseller Program



APPENDIX III
to
AMS-IX RESELLER AGREEMENT
Service Description for Reseller Port



APPENDIX IV
to
AMS-IX RESELLER AGREEMENT
Pricing Models for Reseller Port



APPENDIX V
to
AMS-IX RESELLER AGREEMENT
AMS-IX Connection Agreement (for use by Reseller)



APPENDIX VI
to
AMS-IX RESELLER AGREEMENT

AMS-IX Connection Conditions



APPENDIX VII
to
AMS-IX RESELLER AGREEMENT

Trademarks

