

AMS-IX CONNECTION CONDITIONS

Article 1. Definitions

For the purpose of these 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 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 by AMS-IX B.V. to act on its behalf such as a Reseller;
- c. **AMS-IX Connection Agreement:** the agreement between Customer and the AMS-IX Company, providing for Customer's connection to the AMS-IX Infrastructure, including any attachments thereto and including these conditions;
- d. **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;
- e. **AMS-IX IP-address:** one or more IP-addresses, received by Customer for its own router per port Customer has applied for, out of a dedicated address range reserved for the AMS-IX Infrastructure;
- f. **Assignment Date:** the date when AMS-IX Company communicates the connection details to Customer;
- g. **Association:** the association 'Vereniging Amsterdam Internet Exchange', having its registered office in Amsterdam, The Netherlands;
- h. **Co-location:** any physical location in which the AMS-IX Infrastructure is present;
- i. **Connection:** the physical connection of the router of Customer (directly or via a third party network) to the AMS-IX Infrastructure;
- j. **Customer:** the party who has obtained connection to the AMS-IX Infrastructure through an AMS-IX Connection Agreement;
- k. **Production Date:** the date AMS-IX Company defines the connection in production in consultation with Customer.

Article 2. Applicability, Appendices

These AMS-IX Connection 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. Amendments or supplements to the AMS-IX Connection Agreement are valid only if agreed in writing.

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.

3.2 Customer is responsible for arranging co-location facilities for routing equipment. In case of remote connection using a third party network the Customer is responsible for arranging the local cross-connect between the third party network and the AMS-IX Infrastructure.

3.3 Peering is not covered by the AMS-IX Connection Agreement. The Customer is responsible for the 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) in order to represent Customer and to vote on its behalf in the General Meeting (Org Meeting) of the Association. The CCP may be represented by another employee of Customer who is duly authorized to do so.

4.2 Customer will appoint a Technical Contact Person (TCP) in order to represent Customer in the Technical Meeting of the Association and 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 guarantees 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.

Article 5. Rates and Payment

5.1 Customer agrees to pay the price for the Connection as specified in the AMS-IX Connection Agreement (including additional future order-forms) or otherwise agreed with the AMS-IX Company. 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. Invoices shall be sent in the first month of the period concerned in accordance with the AMS-IX Connection Agreement.

5.2 Payment must be made within 30 days of the invoice date.

5.3 The AMS-IX Company shall periodically reassess and re-establish the price of the Connection. The price strategy of AMS-IX B.V. shall be in accordance with the Long Term Commercial Strategy as established and adapted from time-to-time by the General Meeting of the Association.

5.4 Price changes shall be made public at least 3 months prior to a change.

6.5 If the Association or the AMS-IX Company renders any additional services to Customer, Customer agrees to pay such additional services separately.

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 (article 4.1 or 4.4) to the other party. The termination is effective as of the end of the calendar quarter in which the other party received the said written notice. However, if Customer's membership of the Association has ended in accordance with the Association's articles of association, termination will be effective immediately upon receipt of the 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 under the AMS-IX Connection Agreement; 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;
- 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 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 is not a member of the Association, or if

- 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 each of the other Customers with whom traffic is exchanged.

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 (www.ams-ix.net/sd) as established and adapted from time-to-time by AMS-IX B.V., provided that Customer guarantees a 24 hours per day reachability and that Customer has provided the AMS-IX Company with the information necessary therefore (at least a phone number and e-mail address).

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 AMS-IX or to the normal operation, availability or functionality of the Connection and/or the Co-location or to the traffic exchanged.

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.

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 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 to comply with a statutory obligation or a judicial decision;
- such is necessary in the view of AMS-IX Company or AMS-IX for the operation of the AMS-IX infrastructure, in accordance with article 7.5
- AMS-IX Company or AMS-IX B.V. has received a claim as referred to in article 7.8, or
- Customer is in breach of one or more of its essential obligations under the AMS-IX Connection Agreement.

7.8 Customer will safeguard AMS-IX Company and AMS-IX and the Association and hold them harmless from any and all damage they might suffer 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 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 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.

8.4 The amounts mentioned in clauses 8.2 and 8.3 do not apply to damage that is caused by gross negligence or by harmful or criminal intent.

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 The AMS-IX Connection Agreement shall be governed by Dutch Law. 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 the AMS-IX Connection 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.