



## AMS-IX USA Inc. GENERAL TERMS AND CONDITIONS

Version 2013

### Article 1. Definitions

For the purpose of these AMS-IX USA 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 USA Inc.:** AMS-IX USA Incorporated, a limited Delaware company, having its registered office at 228 East 45th Street, Suite 9E New York, NY 10017, USA;
- c. **AMS-IX USA Company:** the party with whom Customer has executed the AMS-IX USA Connection Agreement, i.e. either AMS-IX USA Inc. or a third party appointed as a designated reseller by AMS-IX USA Inc.;
- d. **AMS-IX USA Connection Agreement:** the agreement between Customer and the AMS-IX USA Company, providing for Customer's connection to the AMS-IX USA Infrastructure for the location as specified therein, including any attachments thereto and including these AMS-IX USA General Terms and Conditions;
- e. **AMS-IX USA Infrastructure:** the Internet Exchange Infrastructure operated by AMS-IX USA Inc. within the United States, consisting of metro networks that facilitate peering and IP traffic exchange between parties connected thereto, for the location as specified in the AMS-IX USA Connection Agreement;
- f. **AMS-IX USA 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 USA Infrastructure;
- g. **AMS-IX USA General Terms and Conditions:** these general terms and conditions, governing Customer's connection to the AMS-IX USA Infrastructure;
- h. **Assignment Date:** the date when AMS-IX USA Company communicates the connection details to Customer;
- i. **Co-location:** any physical location in which the AMS-IX USA Infrastructure is present;
- j. **Connection:** the physical connection of the router of Customer (directly or via a third party network) to the AMS-IX USA Infrastructure, also referred to as "Port";
- k. **Customer:** the party that has applied for and shall obtain a connection to the AMS-IX USA Infrastructure by means of an AMS-IX USA Connection Agreement;
- l. **Production Date:** the date AMS-IX USA Company defines the connection in production in consultation with Customer.

### Article 2. Applicability, Appendice

These AMS-IX USA General Terms and Conditions shall apply to all offers, agreements or other legal relationships pursuant to which the AMS-IX USA Company is providing, or offering to provide, a Connection to the AMS-IX USA Infrastructure and/or related services or goods of whatever nature to the Customer, in particular the AMS-IX USA Connection Agreement. Amendments or supplements to the AMS-IX USA Connection Agreement are only valid if agreed in writing, signed by both parties. In the absence of written agreement to the contrary between the parties, AMS-IX USA Company rejects the applicability of all general conditions other than its own.

### Article 3. Object

**3.1** AMS-IX USA Company will make and keep the Connection available to Customer, and Customer agrees to pay the price therefore in accordance with the terms of the AMS-IX USA Connection Agreement. Any obligations and responsibilities of the AMS-IX USA Company regarding the Connection do 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 USA 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 USA General Terms and Conditions or the AMS-IX USA Connection Agreement. The Customer is responsible for the negotiation, conclusion and implementation of peering arrangements with other users of the AMS-IX USA 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 USA Connection Agreement (including additional future order-forms) or as otherwise agreed with the AMS-IX USA 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 USA Company.

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

**5.5** The AMS-IX USA 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 USA 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 USA 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 USA 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 USA 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 USA Connection Agreement AMS-IX USA Company will immediately terminate the availability for Customer of the AMS-IX USA 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 USA Connection Agreement are non-exclusive. Customer is not entitled to assign and/or sublicense any of its rights under the AMS-IX USA Connection Agreement, or make the Connection available, to any third party unless it has been authorized thereto by AMS-IX USA Inc. in a separate written agreement.

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

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

**7.4** Under the provision Customer acts in accordance with article 4.3 above and any other terms of the AMS-IX USA Connection Agreement, AMS-IX USA Company shall provide all reasonable care, skill and diligence to ensure that the Connection functions in accordance with the operational and functional specifications as specified in the service description, available on the website of AMS-IX USA Inc. , which may be adapted from time-to-time by AMS-IX USA Inc..

**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 USA Infrastructure, to AMS-IX USA 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://nynj.ams-ix.net/allowed-traffic/>).

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

**7.7** AMS-IX USA 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 USA Company, implemented adequate measures to prevent or repair such infringement;
- such is necessary for AMS-IX USA Company or AMS-IX Association to comply with a statutory obligation or a judicial decision;
- such is necessary in the view of AMS-IX USA Company or AMS-IX Association for the operation of the AMS-IX USA Infrastructure, in accordance with article 7.5 above;
- AMS-IX USA 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 USA Connection Agreement.

**7.8** Customer shall indemnify AMS-IX USA 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 USA Infrastructure through the Connection of Customer, would be violating USA or foreign statutory rules, rules of public order or decency or rights of third parties.

## **Article 8. Liability**

**8.1** THE LIABILITY OF PARTIES, WHETHER BASED UPON BREACH OR TORT OR OTHERWISE, IS LIMITED TO COMPENSATING DIRECT DAMAGES (AS DEFINED BELOW) TO THE AMOUNT WHICH IS PAID BY CUSTOMER TO AMS-IX USA COMPANY UNDER THE AMS-IX USA CONNECTION 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 SERIES) THAT CAUSED SUCH DAMAGES.

**8.2** IN NO EVENT SHALL A PARTY BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS, WHETHER OR NOT THE PARTY OR ITS EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

**8.3** Direct damage shall solely mean:

reasonable expenses which the party would have to incur to make the performance of the other party conform to the AMS-IX USA Connection Agreement. This alternative damage shall not be compensated, however, if the AMS-IX USA Connection Agreement is rescinded by one of the parties;

reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of this article;

reasonable expenses incurred to prevent or mitigate damage, insofar as the party demonstrates that these expenses resulted in mitigation of direct damage within the meaning of this article.



**8.4** The limitations as set forth in article 8.1 and 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 USA 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 USA Connection Agreement.

**9.2** Customer shall treat as confidential all information classified as such by AMS-IX USA Company of which it has learned by virtue of the performance of activities under the AMS-IX USA 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 USA Company and Customer including the Connection Agreement, shall be governed by the laws of the State of New York, the United States of America.

Any dispute with regard thereto will be brought exclusively before the competent court of law of the city of New York, the United States of America.

**10.2** The AMS-IX USA 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 USA Connection Agreement and of these AMS-IX USA 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 USA Company, is solely for the convenience of Customer.

**Article 11. Amendment to these conditions**

**11.1** AMS-IX USA Inc. is authorized to make modifications and/or additions to these AMS-IX USA 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 USA Inc.