



# MCXess

**General Terms and Conditions MCXess B.V.**



## MCXess General Terms and Conditions for services rendered

### Article 1 - Definitions

The terms used in these Terms and Conditions, the Agreement, the Service Level Agreement and similar documents have the following meaning:

- Applicant** : The party that wishes to obtain services of MCXess on the basis of an agreement.
- Content** : Products or services offered by or through a Contractor to an End user with the use of the Services.
- Contractor** : The party with whom MCXess enters into one or more agreements with respect to Services.
- Services** : One or more service(s) or product(s) offered by MCXess, rendered to or for the Contractor by or on behalf of MCXess, including but not limited to the following:  
**Voice Acces** (Voice Premium, Voice Freephone, Voice Virtual Geo)

#### SMS Services

**Intelligent Networking** (VRS/SMS/Web/ IP PBX)

**Add on's** (such as call center assistance, voice studio and contents products)

**Connectivity Services** (such as through ISDN, VOIP, DSL, VPN)

- End user** : The user (whether consumer or not) of Content.
- Keyword** : A combination of letters or figures for requesting Content.
- MCXess** : MCXess B.V., a private company with limited liability under the laws of the Netherlands, Startbaan 5, 1185 XP Amstelveen, the Netherlands, tel: +31 20 4722288, fax: +31 20 4724433, and affiliated companies as meant in article 2:24b of the Dutch Civil Code.
- Abuse** : Abuse is described in article 22 and 24 of these Terms and Conditions.
- Numbers** : Telephone numbers for freephone, shared cost and premium rate traffic.
- Improper Use** : Improper Use is described in article 22 and 24 of these Terms and Conditions.
- Operator** : A provider of fixed and / or mobile telecommunication networks.
- OPTA** : The Dutch regulatory authority for mail and telecommunication "Onafhankelijke Post & Telecommunicatie Autoriteit", or a comparable body or possible successor.
- Agreement** : The agreement between MCXess and the Contractor.

- Porting** : Transferring routing and exploitation of a Number or Shortcode from one Operator to another.
- Short code** :  
A shortened number used for Content meant as destination for or sender of messages.
- Tariff/Tariffs** : The compensation due by Contractor to MCXess with respect to the Services.
- Chain Party** : One or more Chain Parties exist if MCXess does not directly enter into a contract with an Operator for the infrastructure or other services required for the rendering of Services.
- Outpayment** : Number dependant and / or Operator dependant amount charged by the Operator to the End user for the use of Content offered by or through the Contractor with the use of Services, which -if and in so far received by MCXess- will be transferred to the Contractor.

## **Article 2 - General stipulations**

- 2.1 These Terms and Conditions are applicable to all requests, offers and agreements with respect to Services.
- 2.2 The characteristics and / or specifications of the Services are described in separately published product information sheets. These can be obtained at no additional cost at the locations designated by MCXess or can be sent at no additional cost upon request.

## **Article 3 - Offers**

- 3.1 All offers are without obligation, unless it is explicitly indicated otherwise. All quoted prices are to be increased with VAT, unless it is explicitly indicated otherwise. The offer is valid and open for acceptance for a period of 14 days after its date, unless it is explicitly indicated otherwise.

## **Article 4 - Formation of Agreements, request for change**

- 4.1 The Services are applied for or changed by filling out and lawfully undersigning the designated form by Applicant/Contractor, unless agreed otherwise. A copy of these Terms and Conditions will be offered to Applicant worden aangeboden, or will be sent at no additional cost.
- 4.2 For the formation of the Agreement, the Applicant/Contractor shall provide MCXess, or a party designated by MCXess, with all means of identification as required by Dutch law, as well as information regarding place of residence or establishment required for the correct formation of the Agreement or a request for change. The

Applicant/Contractor warrants this information to be correct and complete.

- 4.3 If Applicant/Contractor wants to enter into or change an Agreement also on behalf of another person or entity, Applicant/Contractor shall prove its power of attorney, i.a. by submitting an excerpt from the trade register / Chamber of Commerce and / or written proof of its authorization to enter into / change the Agreement. The Contractor warrants these documents to be correct and complete.
- 4.4 The Agreement is entered into and the change is deemed to be realized, on the date on which MCXess sends written confirmation of acceptance by MCXess to Applicant/Contractor, unless otherwise agreed.
- 4.5 An application for rendering Services or change shall only be accepted by MCXess if to the sole opinion of MCXess the rendering or change is reasonably possible. In no event is MCXess required to accept the application by Applicant/Contractor and it can at any rate deny the application when:
  - a. the Applicant/Contractor is legally incompetent
  - b. paragraphs 1 and 2 of this article are not complied with
  - c. the request of MCXess for security as described in is not complied with
  - d. MCXess considers it plausible that Applicant/Contractor will not comply with the Terms and Conditions
  - e. MCXess has reasonable doubt regarding the creditworthiness and / or payment record of Applicant/ Contractor
  - f. Applicant/Contractor does not (fully) meet its obligations or it is plausible that Applicant/Contractor will not meet its obligations pursuant to the Agreement.
- 4.6 Applicant/Contractor shall not be entitled to any compensation for damages, directly or indirectly caused by the denial of an application or requested change.
- 4.7 If an application or request for change will be denied, MCXess will in principle inform Applicant/ Contractor thereof within fourteen (14) days after the application is submitted.
- 4.8 MCXess is to be promptly informed on every change with respect to name, place of residence or seat, invoice address or change of legal form. For the acceptance of a change of legal form MCXess may require additional conditions.

## **Article 5 - Services, obligations of MCXess**

- 5.1 MCXess will offer the functionality of the services to Contractor, such as described in

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the product information sheet. Granting of needed functionality is only binding after the definitive formation of the Agreement.

- 5.2 For the rendering of certain Services MCXess is dependant on third parties, such as Operators and possible Chain Parties. MCXess can only influence the correct processing of traffic within the technical and factual preconditions set by these third parties.
- 5.3 MCXess reserves the right to change the Services for technical or business economic reasons, if possible MCXess will inform Contractor in writing at least one (1) month before.
- 5.4 Contractor shall not be entitled to any compensation for damages, directly or indirectly caused by a change of Services.
- 5.5 MCXess reserves the right to temporarily interrupt or suspend the Services if forced by (capacity) problems in the network or facilities of the Operator, or if otherwise forced by an Operator or Chain Party.
- 5.6 For blocking and unblocking of Services MCXess can charge administration costs, as described in the applicable Tariff list.
- 5.7 To the Agreement, and in addition to these Terms and Conditions, a specific service level agreement (SLA) is applicable, dependant on the Services obtained by Contractor.
- 5.8 The Customer Care department aims to respond materially within thirty (30) days after receipt of a complaint, unless an investigation is required that can not be concluded within that term or this is reasonably not possible for other reasons. In that case Contractor shall during the term be informed of the date on which he shall be informed of the decision.

## **Article 6 - Obligations Contractor**

- 6.1 Contractor shall have the responsibility. For its own risk and account, to establish and maintain the necessary connections with the infrastructure delivered by MCXess.
- 6.2 If by or through Contractor Content is delivered to End users, Contractor shall timely and promptly inform MCXess thereof. MCXess is entitled, and Contractor is obligated, to timely inform third parties, including the End user, about the costs of the Content and, in case of a subscription, about the manner of termination / blocking the subscription.
- 6.3 Contractor warrants that the Content offered by or through the Contractor with the use of the Services, is in compliance with all applicable regulations and legislation, including with respect to the contents and costs.
- 6.4 Contractor ensures and warrants that all rules of conduct and covenants applicable within the telecommunication sector are fully complied with, such as but not limited to, the code of conduct for SMS services, the covenant regarding prevention of improper use of Information numbers and all other regulations, whether forced by government or not, such as, but not limited to, the Code of conduct for games of chance, as in effect at any given time.
- 6.5 If Contractor can reasonably expect that the use of the Services at a given time can exceed the expected use, or if the expected amount of traffic shall be higher than anticipated, or if the use of the Services can hinder telecommunication traffic, Contractor is obligated to immediately inform MCXess thereof and to confirm this by facsimile or email. MCXess does not accept and waives any liability for the consequences of such use or not meeting the service levels as described in the SLA.
- 6.6 Contractor ensures and warrants that, for its own risk and account, Contractor shall timely apply for and obtain of any permit, approval or exemption, necessary for the use of the Services or the offering and / or delivering of Content, such as, but not limited to, permits for games of chance, which permits may be put in the name of MCXess or a Chain Party if necessary. Contractor indemnifies MCXess against all damages which may result from the lack of such permits, approvals or exemptions and any violation of the conditions of such.
- 6.7 Contractor is prohibited to Abuse or make Improper Use of the Services.

#### **Article 7 - Intellectual property**

- 7.1 All intellectual property rights related to the Services belong to MCXess or the licensee. No intellectual property rights shall transfer to Contractor, unless explicitly agreed otherwise by written agreement.
- 7.2 Contractor shall not perform any act that breaches, limits, or otherwise hinders intellectual property rights that do not belong to Contractor.

#### **Article 8 - Personal data**

- 8.1 Data obtained by or for the Services shall be registered by MCXess in a registration as meant in the Dutch Data Protection Act (“Wet Bescherming Persoonsgegevens”). MCXess shall observe the regulations pursuant thereto with respect to processing and security.
- 8.2 MCXess shall only use and process the obtained data within the goal of the registration. In addition MCXess shall use the data, within the boundaries of statutory regulations, for market analysis and structuring the Services to the relevant need. Contractor unambiguously consents to the registration, processing and use of the data provided in the application, as well as the use of traffic data, which can be used by MCXess for:
- a. Invoicing and interconnection payments;
  - b. Dispute settlement;
  - c. Network administration;
  - d. Providing information to Contractor;
  - e. Detection of Abuse and Improper Use;
  - f. Market analysis and sale of Services.
- 8.3 In so far appropriate given the Services, and except when the Contractor has explicitly ruled this out in the application, MCXess shall provide name, address, company and / or business to Operators in order to incorporate such in public guides or information services.
- 8.4 Within the framework of the Data Protection Act MCXess notes that the data mentioned in paragraph 1 can be provided to persons or entities for debt collection in case of payment arrears.
- 8.5 The Contractor warrants that it will also fully comply with the Data Protection Act and indemnifies MCXess against claims from third parties in this respect.

#### **Article 9 - Force majeure**

- 9.1 Neither party shall be obligated to meet an obligation when this is prevented due to force majeure.
- 9.2 Force majeure for MCXess shall mean any circumstance independent of the will of MCXess which fully or partly prevents meeting an obligation towards Contractor, or which makes that it can not be reasonably expected from MCXess to meet such obligation, regardless whether such circumstance could have been foreseen at the moment of conclusion of the Agreement. Such circumstances are at any rate emergencies (such as extreme weather conditions, fire and lightning strike), prevention or refusal of compliance by parties of which MCXess is dependant for the execution of the Agreement, such as Operators, and governmental, legal or regulatory restrictions, including not having required permits.
- 9.3 If a period of force majeure has lasted longer than one (1) month, each of the parties shall have the right to terminate the Agreement. In so far performances have been delivered, these will be compensated on a pro rata basis, without parties being due anything more.
- 9.4 In case of force majeure the Contractor shall not have any right for compensation of damages, even if MCXess would have any advantage as a consequence of the force majeure.

#### **Article 10 - Tariffs and Outpayment**

- 10.1 All Tariffs in the tariff list are to be increased with VAT, unless explicitly indicated otherwise.
- 10.2 Tariffs used by MCXess can be distinguished in:
- a. one time amount
  - b. periodic amount
  - c. use dependant amount
- 10.3 The tariff structure can be viewed at the sale locations of MCXess.
- 10.4 Use dependant Tariffs are due by Contractor on the basis of the actual registered use. In so far MCXess offers an online reporting system, this is for informational purposes only and not binding. The actual registered use as determined by the Operator or Chain Parties is, if accepted by MCXess, decisive.
- 10.5 MCXess shall be entitled to adapt the periodic and use dependant Tariffs on the basis of price developments in the market, as well as government imposed cost price increasing taxes, duties or import duties, as well as changes in tariffs of Operators or

Chain Parties. The Contractor shall be timely informed of a change in Tariff.

- 10.6 If an Outpayment is due by End users for Content, Contractor is obligated to properly disclose such information, in compliance with all applicable codes of conduct and regulations.
- 10.7 If and in so far with use of the Services Content is delivered with which the Contractor, its contracting parties or the supplier of the Content, intends to receive Outpayments, MCXess is only obligated to redirect the Outpayment received from the Operator to Contractor. If for any reason whatsoever MCXess does not, or does not fully, receive the Outpayment, or if it is reclaimed in whole or in part, MCXess does not have any obligation towards Contractor to pay the non-received or reclaimed part. MCXess shall never have an independent payment obligation with respect to the Outpayment. In case of reclamation the Contractor shall pay the reclaimed amount to MCXess at the first request of MCXess.
- 10.8 If the Operator or the End user does not pay the Outpayment, the Contractor shall nevertheless be obligated to pay the Tariffs in connection with the relevant traffic. Any penalties, compensation for damages or costs charged by the Operator and / or a Chain Party to MCXess in connection with unpaid or non-delivered Content or wrongful charges to the End user and / or related to Abuse or Improper Use, are for the risk and account of Contractor and Contractor indemnifies MCXess for claims in this respect from Operators, Chain Parties and third parties.

#### **Article 11 - Invoicing and payment**

- 11.1 The use dependant Tariffs due by Contractor shall be subsequently invoiced by MCXess on a monthly basis.
- 11.2 Periodic Tariffs can be invoiced by MCXess in advance, unless otherwise agreed.
- 11.3 One time Tariffs are, unless otherwise agreed, claimable in three installments:
  - a. 50% at the conclusion of the Agreement between MCXess and Contractor
  - b. 40% at the moment MCXess announces (the part of) the Services for which the amount is indebted, to be ready
  - c. 10% after completion of a succesful acceptance test na voltooiing van een succesvolle acceptatietest for (the part of) the Services for which the amount is indebted
- 11.4 The invoiced amount is due and claimable within fourteen (14) days after the invoice date.
- 11.5 Possible Outpayments received by MCXess shall be redirected by way of a credit

invoice, unless parties agree on a different manner of invoicing.

- 11.6 Unless otherwise agreed, by entering into the agreement Contractor authorizes MCXess to automatically collect payment for the Tariffs indebted by the Contractor, by means of a direct debit of the bank account of Contractor. Payment by direct debit takes place because Contractor authorizes MCXess to automatically collect payment in such way.
- 11.7 The Contractor ensures for sufficient funds for the payment by direct debit in the designated account. In case the payment by direct debit can not be effectuated because of insufficient funds, Contractor shall immediately pay the invoiced amounts in another manner.
- 11.8 If Contractor does not agree with a specific payment by direct debit, it can reverse the payment within thirty (30) days, or if the Contractor is a legal entity, within five (5) days, through its bank. In case of lack of payment on the due date, the Contractor will be automatically in default, without notice of default being required. MCXess is then entitled to charge the full indebted amount to be increased with an interest of 1% per month, or the statutory interest, whichever is higher.
- 11.9 Without prejudice to the above, all costs associated with debt collection -in or out of court- shall be for the account of Contractor. In any case MCXess is entitled to charge an amount for out-of-court costs of 15% of the unpaid amount, with a minimum of EUR 250 (twohundred fifty euro).
- 11.10 MCXess shall have the right to suspend and / or temporarily block the Services if:
- a. the Contractor revokes the authorization for payment by direct debit
  - b. Contractor repeatedly does not timely pay the invoices of MCXess
  - c. the solvability of Contractor deteriorates in such a way that there is doubt regarding the payment possibilities and creditworthiness of Contractor
  - d. Abuse or Improper Use has been noticed
- 11.11 For blocking and unblocking MCXess shall charge Contractor with costs as described in the Tariff list. Periodic Tariffs remain indebted during such block.
- 11.12 Contractor shall also be obligated to pay the invoiced amounts if the Services used by him are used by third parties with his consent.

#### **Article 12 - Set off**

12.1 MCXess shall be entitled to set off the amounts due to Contractor as well as possible collected Outpayments, against any claim of MCXess, whether due and claimable or not, on Contractor. Contractor shall not be entitled to set off any payment obligation against any claim on MCXess, on any ground whatsoever.

#### **Article 13 - Security**

13.1 If MCXess has reasonable doubt regarding Applicant/Contractor meeting its payment obligation, MCXess shall be entitled to require a bank guarantee or suretyship, or a security deposit. The amount thereof shall not exceed the amount that Applicant/Contractor shall reasonably be indebted over a period of six (6) months.

#### **Article 14 - Liability and indemnification**

14.1 MCXess shall not be liable for damages except and in so far this is otherwise stipulated in this article.

14.2 MCXess shall never be liable for any damages of non-performance pursuant or related to technical and factual preconditions set by Operators or Chain Parties.

14.3 MCXess shall not be liable for damages caused by or related to applications of third parties, or as a consequence of use of applications in violation of license conditions or not confirming to the goals for which the application is intended. MCXess does not warrant that software made available by, or used by, MCXess shall function at all times. garandeert niet dat ter beschikking gestelde of door MCXess gebruikte software te allen tijde zal functioneren.

14.4 MCXess shall not be liable for any damages sustained by Contractor and / or third parties caused by loss, mutilation or inaccessibility of data. Contractor shall take all reasonable precautions, including making of back up copies on a regular basis.

14.5 MCXess only acts as a service provider with respect to technology and / or infrastructure. MCXess shall therefore not be liable for any direct, indirect or consequential damage with respect to financial or payment transactions related to the Services, such as, but not limited to, (granting access to) proof of payment, payment mechanisms and payment methods.

14.6 MCXess shall not be liable for, and Contractor indemnifies MCXess against, claims of third parties with respect to the content of sent or received messages, internet content, contents of TV or other programs or any other application for which the Services are used by Contractor.

14.7 MCXess shall never be be liable for indirect and consequential damages, including, but not limited to, losses due to delays, business losses, loss of profit or loss of

turnover.

- 14.8 Without prejudice to the stipulations in this article or elsewhere, any liability of MCXess shall be limited to the part of the Tariffs that is for the sole benefit of MCXess as received by MCXess over a period of 12 months prior to the event causing damages for the relevant Service, with a maximum of EUR 5,000.-- (fivethousand euro) per event or EUR 50,000.-- (fiftythousand euro) per year. The part of the Tariffs that is for the sole benefit of MCXess shall mean the amount that is actually for the sole benefit of MCXess, therefore reduced by the costs charged by Operators and possible Chain Parties.
- 14.9 Precondition for any entitlement to compensation for damages is notification of MCXess by the Contractor within one (1) week after these damages have arisen, unless the Contractor can make plausible that notification could not have been done earlier.
- 14.10 Claims of Contractor for compensation of damages, with the exclusion of claims on the basis of tort, shall be made within four (4) weeks as of the moment that the Contractor could reasonably have been aware of these damages, but in any case within a maximum of three (3) months, as of the day on which the damages occurred, in the absence of which any entitlement to compensation lapses.
- 14.11 The stipulations of this article are also stipulated on behalf and for the benefit of subordinates of MCXess as well as third parties used by MCXess for the execution of the Agreement. The limitations of liability as stipulated in this article do not apply in case of malice or gross negligence of the management of MCXess, but do apply in case of malice or gross negligence of employees, subordinates or third parties.
- 14.12 Contractor shall indemnify MCXess against all claims of third parties, including Operators, Chain Parties and End users, as well as against the consequences of measures taken by judicial and administrative authorities, related to the contents of messages, communication regarding Content or TV or other programs and other acts of Contractor related to the Services, financial or payment transactions and / or claims regarding breach of intellectual or industrial property rights, privacy regulations or otherwise.

## **Article 15 - Chain Parties**

- 15.1 For execution of its services MCXess is entitled to engage third parties. The terms and conditions applied by these Chain Parties may be less beneficial for Contractor than the terms and conditions of MCXess for several issues, such as accessibility, remedying failures and limitation of liability. MCXess assumes, and if necessary hereby stipulates, that MCXess is entitled to accept these terms and conditions used by these third parties, including limitations of liability, also on behalf of the Contractor.

#### **Article 16 - Assignment of rights, use by others**

- 16.1 The Contractor is not entitled to assign the rights and obligations pursuant to the Agreement to a third party, or to allow third parties to make use of the Services, without written consent of MCXess.
- 16.2 In case Contractor allows third parties to make use of the Services, such use will be seen as use by the Contractor for the determination of the obligations of Contractor, Contractor warrants that the obligations imposed on Contractor shall be imposed on these third parties, and the Contractor shall be fully liable towards MCXess for the acts and omissions of these third parties.
- 16.3 Contractor hereby gives consent in advance for assignment of the Agreement by MCXess to third parties which, with respect to the execution of the Agreement, can offer the same quality as MCXess. MCXess shall inform the Contractor in writing if such assignment has taken place. In that case MCXess shall not be liable for the proper performance of the Agreement by such third party.

#### **Article 17 - Term and termination**

- 17.1 The Agreement is entered into for a definite period of twelve (12) months as of the date on which the Agreement is signed. Parties can terminate the Agreement in writing, by registered mail, against the end of this definite period, with due observance of a notice period of two (2) calendar months. In the absence of timely notice, with due observance of the mentioned notice period, the Agreement is prolonged for the same period as the period for which the First agreement is entered into. This unless parties have agreed otherwise in writing.
- 17.2 MCXess may terminate the Agreement with immediate effect, or -to its discretion- suspend the performance of its obligations, if:
- a. Contractor does not comply with its obligations pursuant to the Agreement, in so far as such non-compliance justifies termination or suspension
  - b. Contractor files a request for a moratorium
  - c. Contractor is in bankruptcy
  - d. Contractor liquidates or ceases its business in part or in full
  - e. an attachment is made under the Contractor, which is not lifted within thirty (30) days after the attachment is made
  - f. Contractor does not comply with a request of MCXess to provide financial guarantees.

#### **Article 18 - Changes to terms and conditions and SLA's**

18.1 The terms and conditions and the SLA's can be unilaterally changed by MCXess at all times, also with respect to existing Agreements.

#### **Article 19 - Miscellaneous**

19.1 Disputes between MCXess and the Contractor pursuant or related to the Agreement shall be solely submitted to the courts of the Netherlands, in first instance the district court of Amsterdam, without prejudice to the entitlement of MCXess to submit the dispute to a court that is competent in the absence of a choice of forum.

19.2 This Agreement and any and all Legal relationships pursuant or related thereto shall be solely governed and construed by Dutch law.

### **Conditions applicable to specific Services**

The following articles of the terms and conditions are applicable to specific Services.

#### **Voice Access and SMS Services**

##### **Article 20 - Scope**

20.1 These specific conditions are applicable to Services regarding Voice Access and SMS Services, as well as other Services with which End users can get in contact with Contractor or can obtain Content.

##### **Article 21 - Numbers, shortcodes en keywords**

21.1 MCXess offers Contractor the possibility of porting a Number or Shortcode in so far this is required by Dutch law and Dutch regulations. MCXess is entitled to change a Number, Shortcode or Keyword, if this is deemed necessary by MCXess, an Operator, the OPTA or any other authority.

21.2 In so far this entails from the Services Contractor shall apply for one or more Numbers at the OPTA for the use of the Services. MCXess can not influence, and is therefore not liable for, granting or not granting of Numbers by the OPTA to the Contractor. The Contractor does not have an entitlement to obtain a specific Number.

21.3 When redirecting data provided by Contractor for possible guides and number information services, MCXess can not be accountable for the correctness, completeness and lawfulness of these data.

21.4 MCXess is entitled make a Keyword or reservation thereof lapse if the Services are not used for a period of 2 months, or if less than 50 messages per month are sent with the relevant Keyword, Operators or Chain Parties may impose further stretching

obligations with respect to the use of Keywords, in which case these further stretching obligations are applicable and the Keyword may lapse pursuant to these further stretching requirements.

21.5 When using a shared Keyword the Contractor is prohibited from performing or letting perform acts that may influence the height of amounts that would have been due by a party to another party in the absence of such acts or the information of tariffs that are due for the use of Content or using an information service. MCXess or a Chain Party remains the rightful holder of Keywords.

## **Article 22 - Abuse and Improper Use**

22.1 MCXess is entitled to suspend or terminate the Services with immediate effect in case of (a suspicion of) Abuse or Improper Use of the Services by Contractor, or its possible contracting parties or the supplier of Content or if Contractor, or its possible contracting parties or the supplier of Content do not comply with the rules of conduct applicable within the telecommunication sector. In such case MCXess shall not be liable for compensation of any damages and shall MCXess be entitled to recover all pursuant costs and damages from Contractor.

22.2 Abuse or Improper Use shall in any case be present if:

- a. the Operator takes the position that there is abuse or improper use, or
- b. the use is in violation of legal obligations, or
- c. the use is regarded as such in the telecommunication sector or society, including but not limited to as set out in rules of conduct such as the code of conduct for SMS services, the covenant regarding prevention of improper use of Information numbers, or
- d. in case of:
  - traffic to a specific Number or Short code that leads to high use by the same mobile or fixed number, or from the same geographical location, or
  - traffic that did not lead to charging of End users with the appropriate tariffs, or
  - traffic that can be traced to traffic where the identity of the End user is not similar to the personal data provided by the End user to the telecom operator, or
  - a large number of “calls” shorter than 10 seconds to a Number

## **Intelligent Networking / Add on's / Connectivity Services**

### **Article 23 - Scope**

23.1 These specific conditions are applicable to Services regarding Intelligent Networking / add on's / Connectivity Services.

### **Article 24 - Abuse en Improper Use**

24.1 MCXess is entitled to suspend or terminate the Services with immediate effect in case of (a suspicion of) Abuse or Improper Use of the Services by Contractor, or its possible contracting parties or the supplier of Content or if Contractor, or its possible contracting parties or the supplier of Content do not comply with the rules of conduct applicable within the telecommunication sector. In such case MCXess shall not be liable for compensation of any damages and shall MCXess be entitled to recover all pursuant costs and damages from Contractor.

24.2 Abuse or Improper Use shall in any case be present if:

- a. the Services are used for transmitting any material with which the applicable local laws or regulations are violated, or
- b. the Services are used for performing fraudulent activities, or
- c. the Services are used for sending of any unsolicited commercial email or unsolicited bulk emails, or performing of activities that enable such sending, or
- d. the Services are used for gaining access, or attempts thereto, to accounts of others, or cracking or circumventing security measures for computer soft- or hardware, or
- e. the Services are used for transmitting any material with which intellectual or industrial property right is breached, including but not limited to unauthorized copying of copyrighted material, or
- f. the Services are used for activities that may interrupt or hinder network services or network equipment.