



# MCXess

General Terms and Conditions MCXess B.V.

Version 1.12 - 20 December 2017

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Version: 1.12

Date: 20 December 2017

### Module A. General

#### Article A.1. Scope, priority and definitions

A.1.1. These General Terms and Conditions and the General Module are applicable to all offers by MCXess in relation to the Services and form an integral part of every Agreement.

A.1.2. The specific modules shall be applicable if the Services requested or offered fall within the scope described in the module. If a specific module is applicable, this shall take precedence over the General Module.

A.1.3. Stipulations or terms and conditions of Contractor that differ from or do not appear in these General Terms and Conditions shall only be binding on MCXess if and insofar as they have been expressly accepted by MCXess in Writing.

A.1.4. Specific commitments shall only take precedence over these General Terms and Conditions if they are in Writing and if this is expressly stipulated or was unmistakably the intention of both parties.

A.1.5. The definitions of terms with an initial capital can be found at the end of the General Module and are applicable to all modules.

A.1.6. In case of conflict between stipulations of the Agreement, General Terms and Conditions or annexes thereto, the following order of priority shall apply:

- a) the Agreement;
- b) any Service Level Agreement that has been concluded;
- c) any supplementary terms and conditions, for example terms and conditions stated via the MCXess Website when offering the Product or Service.
- d) these General Terms and Conditions;

#### Article A.2. Inception of the Agreement

A.2.1. A contract can be entered into with MCXess or a third party through an online channel, including the MCXess Website, by or on behalf of Contractor using a method authorised by MCXess. Alternatively, an amendment to an existing contract can be agreed. The contract may, for example, be entered into when Contractor approves a contract offered online by MCXess by means of a web form, or when Contractor approves new or amended agreements with Contractor in a manner stipulated by MCXess.

A.2.2. To Agreements concluded or to be concluded between Contractor and MCXess the articles 227b paragraph 1 and article 227c of the Dutch Civil Code do not apply.

A.2.3. Contractor represents that the e-mail address provided to MCXess (for example on the moment of concluding the Agreement) is correct and is authorized and supervised by Contractor. Furthermore, Contractor agrees to receive all relevant information relating to the Agreement on the provided e-mail address. The e-mail sent by MCXess shall be deemed to have been received at the time it reaches the server of Contractor. Contractor is solely responsible for the configuration of his (mail)server, including but not limited to spam or authorizations of the e-mail accounts.

A.2.4. MCXess is at all times entitled to refuse Contractor.

#### Article A.3. Duration and termination

A.3.1. The Agreement is entered into for the period stated on the MCXess Website (hereinafter: the contract period). The said contract period shall run from the day when the Services are ordered by Contractor (activation date). If the contract period is not stipulated, it shall be deemed to have been entered into for a contract period of 12 months from the date on which the Services were activated by MCXess as agreed. Unless agreed to the contrary, the Agreement, in the absence of termination in Writing reaching the other party at least two months before the end of the contract period, shall be tacitly extended for an indefinite period of time, subject to one month's notice. Contractor shall receive (electronic) confirmation of the beginning of the contract period. If different Services are purchased under an Agreement, these shall have separate start dates and also contract periods which may run concurrently and may be extended for different periods. The Agreement shall, in that case, be classified as a master agreement. If a Product and/or Service is terminated under the master agreement, the remaining Services shall continue.

A.3.2. MCXess is authorised to dissolve or suspend the Agreement either in full or in part, with immediate effect, without the intervention of a court, by letter, fax or e-mail and without any obligation to pay compensation or provide indemnity, if:

- a) Contractor fails to meet the obligations in the Agreement in a full and timely manner;
- b) Circumstances that come to the knowledge of MCXess after concluding the Agreement provide good grounds for concern that Contractor will not meet the obligations;
- c) Contractor has been requested, in accordance with article Article A.4. to provide security for performance of its obligations arising from this Agreement and the said security has not been provided or is insufficient;
- d) Due to delays on Contractor's side, MCXess can no longer be expected to perform the Agreement under the originally agreed conditions;
- e) Contractor dies, requests suspension of payments or files for bankruptcy;
- f) Any part of Contractor's assets are seized;
- g) Circumstances arise which are such that MCXess cannot possibly be required to comply with the Agreement or cannot reasonably be required to uphold the Agreement unchanged.

A.3.3. If the Agreement is dissolved on the grounds set out in article A.3.2., the debts owed to MCXess by Contractor shall be claimable immediately.

A.3.4. If MCXess suspends compliance with the obligations, it shall retain its claims under the law and the Agreement.

A.3.5. If Contractor fails to meet any of its obligations under an Agreement, MCXess shall be entitled simultaneously to suspend performance of all Agreements concluded with Contractor without notice of default, notification or action by a court being required and without prejudice to the right of MCXess to compensation for damages, loss of profits and interest.

A.3.6. If Contractor is culpable for the dissolution, MCXess shall be entitled to compensation for the damage that have occurred directly and indirectly as a result. This is deemed in every case to consist of periodical charges that Contractor would have been obliged to pay if the Agreement had continued in force.

A.3.7. If notice is served to terminate the Agreement or it is terminated or dissolved for any reason whatsoever, MCXess is entitled, immediately after the date when the Agreement expires, to terminate or suspend the Services and any Accounts belonging to the said Agreement and to delete or render inaccessible all data stored in MCXess systems for Contractor. MCXess is not hereby obliged spontaneously to provide Contractor with a copy of such data. Prior to termination, Contractor may, however, request a copy.

#### **Article A.4. Security**

A.4.1. If MCXess has justified doubts concerning performance of Contractor's payment obligations, MCXess is entitled to request a bank guarantee or surety or to demand payment of a deposit. The amount of this will be no higher than the amount reasonably payable by Contractor in six (6) months.

#### **Article A.5. Performance of the Agreement**

A.5.1. After the Agreement takes effect MCXess shall perform it to the best of its ability and with due care and expertise. It shall be guided in this firstly by the SLA, if applicable, and secondly by the product information and/or technical annexes that are valid at the time when the Agreement takes effect, as provided or made available via the MCXess Website or elsewhere as indicated by MCXess.

A.5.2. MCXess depends for the supply of certain Services on third parties such as Operators and any Chain Parties. MCXess can only influence the correct processing of consumption of Services within the technical and legal limitations imposed by said third parties.

A.5.3. The application and use of a Number are subject to the statutory regulations of the country in which a Number is issued. These statutory regulations may be amended by the competent authorities and may be open to interpretation. Although MCXess endeavours to gear the application process and the allocation of a Number as closely as possible to the statutory regulations and to provide the Contractor with as much information about this as possible, MCXess is unable to guarantee that an application for a Number will always be accepted or that a Number will always remain available. The Contractor is obliged to adequately inform himself about the use of the Number in the relevant countries and within the scope of the applicable statutory regulations.

A.5.4. If the statutory regulations of the country take the form of directory law, these General Terms and Conditions will take precedence wherever possible.

A.5.5. The Number will be issued to the Contractor under the license obtained by MCXess from its suppliers (Operators or Intervening contracting parties). The license for the Number is non-transferrable and is issued by MCXess or directly by the Operator to the Contractor for the period of the Agreement, with due observance of the provisions of paragraph 1 of this article. The license can be withdrawn if the Number is withdrawn for any reason by the competent (possibly foreign) authorities (including regulatory authorities) or can no longer be maintained in compliance with the statutory regulations. MCXess will make every effort to ensure that the Contractor can continue to use the Number, but will not be liable to the Contractor for compensation if the Number is withdrawn. If the Number is withdrawn MCXess will reimburse any advance payments for the remaining term of the Agreement unless the Contractor has culpably failed to meet his obligations under the Agreement.

A.5.6. The Number will not be registered in the Contractor's name. MCXess will enable a Contractor to port the Number exclusively if MCXess or the Operator is obliged to port the Number under statutory regulations or by the competent (regulatory) authorities.

A.5.7. In the event of the Agreement being prematurely terminated (through porting, for example), MCXess will have the right to charge the lost income for the remaining term of the Agreement to the Contractor.

A.5.8. Despite the customer having a license for the Number, the Contractor is fully responsible for the use of the Number and compliance with the relevant statutory regulations. The Contractor indemnifies MCXess and the Operator against all claims of third parties, including regulatory authorities, and will fully compensate MCXess in this regard.

A.5.9. Contractor will defray all (additional) costs related to taking the Number into use. Costs charged to MCXess by suppliers will be charged on immediately to the Contractor and must be paid in accordance with the payment terms laid down in these Chop Terms and Conditions.

#### **Article A.6. Delivery**

A.6.1. Delivery times stated by MCXess are always indicative, unless expressly stated in Writing that they are deadlines. MCXess is only in default, even where a deadline has been agreed, after Contractor has served notice upon it in Writing, subject to the situations prescribed by law in which it shall automatically be in default.

#### **Article A.7. General Terms and Conditions of Use**

A.7.1. Contractor is obliged to do whatever is reasonably necessary and desirable in order to make the timely and correct performance of the Agreement possible. In particular, Contractor shall ensure that all details and documents that MCXess indicates are necessary, or which Contractor should reasonably understand to be necessary for performance of the Agreement, are provided in good time to MCXess. Such details and documents may include, without limitation, company details, proof of address (copy of utility bill no older than 6 (six) months), company registration certificate and/or copy of valid passport or ID.

A.7.2. Unless expressly agreed otherwise, Contractor is itself always responsible for the correct functioning of peripherals on which Services are received and Contractor must itself take responsibility for connecting its own peripherals and/or infrastructure to those of MCXess.

A.7.3. Contractor and Users must not engage in Abuse or Improper use of the Services. In general this means that the Services must not be used in a way that is contrary to the relevant legislation and that they must not infringe the subjective rights of End users and third parties. For the various Services more detailed specific cases may be described that constitute Abuse or Improper use. There are also various codes of conduct that apply to the use of the Services.

A.7.4. Contractor indemnifies MCXess against all claims by End users and third parties based on the assumption that Contractor, its Users or (end) customers have not, using the Services, performed a valid obligation – either legal, on the basis of the Agreement or otherwise – or infringed any subjective right of any other party.

A.7.5. Although MCXess shall make efforts to keep Contractor informed about any licenses that Contractor may need for the Services, no guarantee is given that this is complete. Contractor shall, at all times, remain fully responsible for requesting and obtaining in time all necessary licenses and shall do so at its own expense and risk. Contractor indemnifies MCXess against all damages that may arise from the lack of licenses that Contractor may be obliged by the government to obtain in relation to the Services.

A.7.6. If Contractor may reasonably expect that the use of the Services will exceed the expected use at a specific time, or the expected quantity of data traffic will be larger than expected during a specific period, or that the use of the Services through or via Contractor may cause harm to telecommunications traffic, Contractor is obliged to inform MCXess of this without delay. For specific Services more detailed rules may be defined in this connection in the specific modules and/or in the applicable SLA.

A.7.7. If Contractor in any way fails to comply with the obligations set forth in this article, then Contractor will forfeit an immediately due and payable penalty of 10.000 euro and 1.000 euro for each day the breach continues, without any further act or formality being required. The foregoing shall be without prejudice to all other rights of MCXess, including the right to claim performance and/or compensation for the damage actually suffered by it, insofar as this exceeds the penalty forfeited.

#### **Article A.8. Service Level Agreements**

A.8.1. Depending on the applicable Services, the level of service for the Services shall be governed by an SLA.

A.8.2. Unless the SLA expressly stipulates the contrary, its stipulations shall have a lower priority than the stipulations of these General Terms and Conditions.

A.8.3. Unless the applicable SLA expressly stipulates the contrary, the performance standards set out in it, for example concerning the quantity of Uptime or Downtime, constitute indications and not guarantees.

#### **Article A.9. Personal details**

A.9.1. The details provided by Contractor when requesting the Services from MCXess, and the details that are automatically processed and, where applicable, stored when using the Services, contain personal details. MCXess shall comply with the relevant regulations in relation to the processing and security of personal data.

A.9.2. Contractor unambiguously gives its permission for the details shown in its application to be recorded, processed and used by MCXess. This permission also extends to the use of connection data data (calling number, called number, date and time of start and end of call), which are stored until 7 years after termination of the Agreement and may be used by MCXess for:

- a) Billing and payment;
- b) Dispute resolution;
- c) Network management;
- d) Provision of information to Contractor;
- e) Tracing Abuse and Improper use;
- f) Market research and sales of its own Services.

A.9.3. Contractor gives its permission for personal details, if necessary in connection with the performance or maintenance of the Agreement, to be transferred to third countries, even outside the EU.

A.9.4. In the event of a delay in payments, MCXess shall be entitled to transfer all details referred to in the previous paragraph to persons or bodies instructed by MCXess to collect debts.

A.9.5. MCXess shall ensure an appropriate level of security in relation to the risks involved in processing and the nature of the data that is to be protected. This, however, is only if and insofar as such data is within the systems or infrastructure of MCXess.

A.9.6. If, using the Services, communication takes place which is confidential by its nature, MCXess shall respect its confidentiality. This communication shall not be subject to eavesdropping, tapping, interception or control without prior permission from the User(s) involved, unless this is required by law.

A.9.7. Insofar as MCXess has access to personal data for which Contractor is responsible, MCXess shall only process the said personal data as instructed by Contractor. If Contractor wishes MCXess to process the said personal data for specific purposes, Contractor must enter into a data processing agreement with MCXess for that purpose in which the required data processing activities are described in detail.

A.9.8. Contractor undertakes only to process personal data using the Services in a way that is entirely lawful.

A.9.9. If Contractor, in connection with a legal obligation, for example on the basis of the Law on the protection of personal data, has to amend, delete or surrender data stored in the MCXess systems, MCXess shall assist with this as far as possible. The costs of the work involved in this will be billed separately to Contractor.

#### **Article A.10. Account**

A.10.1. MCXess will provide an Account to Contractor and/or Users. Unless otherwise agreed the Account will be accessible by entering a username and password.

A.10.2. Every action that is carried out through the Account of Contractor or of a User, is deemed to have taken place under Contractor's responsibility and at his risk. If Contractor suspects or should reasonably suspect that abuse of an Account is taking place, Contractor must inform MCXess of this as quickly as possible so that the latter can take action.

#### **Article A.11. Prices**

A.11.1. The prices charged by MCXess are divided into the following:

- a) One-time charges;
- b) Periodical charges;
- c) Use dependent charges.

A.11.2. Use dependent charges are payable by Contractor in arrears on the basis of the actual registered use. In so far as MCXess provides an online reporting system, this is for information purposes only and is not binding. The actual registered use as determined by MCXess, the suppliers of MCXess (including, for example, Operators) or Chain Parties shall, unless reliably proven by Contractor to the contrary, constitute full proof of the use and of the charges payable by Contractor. For any telephone traffic from a payphone, a surcharge of 1 euro per minute applies.

A.11.3. MCXess is entitled to adapt the periodical and use dependent charges on the basis of changes in market prices, as well as taxes, duties or import duties imposed by the government that increase the price, and also due to changes in the prices charged by Operators, Chain Parties or other suppliers on whom provision of the Services depends. Contractor shall be informed in good time, in principle one month before it comes into force, of a price change that is to be introduced.

A.11.4. Unless expressly stated to the contrary, all prices disclosed by MCXess exclude turnover tax and other duties charged by the government. MCXess has the right to invoice in other currencies or to convert these currencies into euros, using a current exchange rate and the costs thereof will be included in the invoicing.

A.11.5. All prices in every offer or tender and on the MCXess Website are subject to programming and typographical errors.

A.11.6. If a price in an offer or tender is based on details provided by Contractor and if these data turn out to be incorrect, MCXess is entitled to change the prices accordingly, even after the Agreement has already taken effect. Any Outpayments received by MCXess will be transferred by means of a credit note, unless parties agree another billing method in Writing.

A.11.7. If and insofar as content is supplied using the Services for which Contractor, its counterparties or the content provider aims to receive Outpayments, MCXess shall only be obliged to transfer Outpayments to Contractor if these are received by MCXess. If, for any reason whatsoever, MCXess does not receive or does not fully receive the Outpayments, or if these are reclaimed in full or in part, MCXess shall not be obliged to pay Contractor for the part that is not received or that is reclaimed. MCXess shall never have an independent payment obligation with respect to Outpayments. If a sum is reclaimed, Contractor is obliged to pay the reclaimed amount to MCXess at the first request by MCXess.

A.11.8. If the Outpayments are not paid by the Operator or the End user for any reason whatsoever, Contractor shall still be obliged to pay the one-time, periodical and use dependent charges in connection with the relevant telephone traffic. Any penalties, compensation for damages or costs charged by the Operator and/or a Chain Party to MCXess in connection with unpaid and/or non-delivered Content and/or Content wrongly charged 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 A.12. Terms and conditions of payment**

A.12.1. Payments can be made as indicated on the MCXess Website (MCXess Shop). Periodical charges may be billed in advance by MCXess unless otherwise agreed.

A.12.2. Unless otherwise agreed, by entering into the Agreement Contractor authorises MCXess to automatically collect payment for the charges payable by the Contractor, by means of a direct debit on the bank account of Contractor.

A.12.3. Contractor shall ensure that an adequate balance is available in the bank account intended for the direct debit at all times. If a direct debit cannot take place Contractor shall pay the amounts billed by MCXess before the due date by other means.

A.12.4. The due date is (14) days after the billing date.

A.12.5. Contractor will be in default automatically from the date when the bill falls due, without prior notice of default being required. MCXess is then entitled to bill for the full amount payable to Contractor plus interest of 1% per month, or the statutory interest, whichever is higher, from the due date.

A.12.6. Without prejudice to the above, all costs associated with collection of outstanding debts – in or out of court (including costs of lawyers, bailiffs and collection agencies) – shall be payable by Contractor. MCXess shall be entitled in any case to charge out of court costs of 15% of the outstanding amount, with a minimum of EUR 250 (two hundred and fifty euro).

A.12.7. MCXess is entitled to suspend and/or temporarily block the use of Services if:

- a) Contractor withdraws the direct debit mandate that it has provided;
- b) Contractor repeatedly fails to make timely payment of bills submitted by MCXess;
- c) Contractor's solvency deteriorates so as to cast reasonable doubt on Contractor's ability to pay and creditworthiness;
- d) Abuse or Improper use is noticed.

A.12.8. MCXess may charge administrative costs for blocking and possible unblocking. Contractor shall remain obliged to pay any periodical charges during the blocked period.

A.12.9. Abuse or Improper use of the Services by End users or other third parties shall not affect any obligation by Contractor to make payment to MCXess.

#### **Article A.13. Offsetting**

A.13.1. MCXess is entitled to offset whatever is payable to Contractor by MCXess, and whatever Outpayments MCXess has collected, against any debt owed to MCXess by Contractor, whether claimable or not.

A.13.2. Contractor is not entitled to offset any of Contractor's obligations to pay against any amount owed by MCXess on any ground whatsoever.

#### **Article A.14. Retention of title**

A.14.1. If and insofar as the Agreement stipulates any transfer of title from MCXess to Contractor, all goods supplied shall remain the property of MCXess until MCXess has received full payment of the entire relevant agreed amount. In the case of intellectual property, including copyright, transfer by MCXess to Contractor shall never occur unless expressly agreed to the contrary in Writing.

#### **Article A.15. Intellectual property rights**

A.15.1. All intellectual property rights related to all Materials developed or made available in relation to Services are retained exclusively by MCXess or its licensors. The Agreement shall not be deemed to stipulate transfer of intellectual property rights from MCXess to Contractor unless the Agreement unambiguously stipulates this and cannot be interpreted differently.

A.15.2. Contractor shall only acquire the rights of use and authorisations explicitly granted in these General Terms and Conditions, the Agreement or otherwise in Writing and apart from this Contractor shall not reproduce or publish any software or other Materials made available by MCXess. An exception to the above-mentioned shall be allowed in the case of unmistakably erroneously failure to grant such a right explicitly to Contractor.

A.15.3. Contractor is not permitted to remove or alter any statement concerning copyright, trademarks, trade names or other intellectual property rights from the Materials, including statements concerning the confidential nature and secrecy of the Materials.

A.15.4. MCXess is permitted to take technical measures to protect the Materials. If MCXess has protected the Materials by means of technical safeguards, Contractor is not permitted to remove or circumvent such security measures.

A.15.5. Any use, reproduction or publication of the Materials that falls outside the scope of the Agreement or the usage rights conferred shall constitute an infringement of MCXess' intellectual property. Contractor shall pay MCXess a penalty of 1,000 euro per infringement, payable immediately, and 10,000 euro per intentional infringement, without prejudice to MCXess' right to claim compensation for damages that it has suffered due to the infringement or otherwise to take legal action to stop the infringement and/or claim for the damages. After a single working day has passed since MCXess has notified Contractor of an infringement, Contractor must also pay a penalty of 5,000 euro per day on which the infringement is not stopped.

#### **Article A.16. Promotion**

A.16.1. To promote its service, MCXess is entitled to show third parties that it provides Services to Contractor and to specify which ones, unless Contractor's reasonable interests would make this unacceptable or unless otherwise agreed in Writing.

#### **Article A.17. Customer Care**

A.17.1. The Customer Care department aims to respond materially within thirty (30) days after receipt of a complaint in Writing, unless this is not reasonably possible, for example because an investigation is needed that cannot be completed within 30 days. In that case Contractor shall be informed in Writing within this period when it will be informed of the decision.

#### **Article A.18. Liability**

A.18.1. The exclusions and limitations stipulated in this article shall not apply if and insofar as the damage results from intent or conscious recklessness on the part of the management of MCXess.

A.18.2. The liability of MCXess for direct damage to Contractor resulting from culpable failure by MCXess to meet its obligations under the Agreement, on any ground whatsoever, expressly also including any failure to comply with a guarantee obligation agreed with Contractor, or any unlawful action on the part of MCXess, its employees or third parties which it deploys, is limited for each event or series of associated events to an amount equal to the sums paid to MCXess by Contractor under the Agreement during the six months preceding the event causing the damages (excluding VAT). If the event causing damages is associated with a specific Product and/or Service, the above-mentioned shall only consist of the amount paid for that specific Product and/or Service. The total sum payable for direct damages, however, can never exceed 5,000 euro per event or 50,000 euro per year (excluding VAT).

A.18.3. The total liability of MCXess for death or physical injury or for material damage to property can never under any circumstances exceed 500,000 euro per event causing damage, whereby a series of related events shall count as a single event.

A.18.4. MCXess shall not be liable for indirect damages, including consequential damage, loss of profits or sales, missed savings, distortion or loss of (commercial) data and damage due to failure of commercial growth.

A.18.5. MCXess is never liable for any damages or defects arising from or related to technical or physical requirements imposed by suppliers (including for example Operators) or Chain Parties.

A.18.6. MCXess is not liable for damages caused by or related to third party software applications or resulting from the use of applications contrary to the license conditions or for purposes for which the relevant application is not intended.

A.18.7. MCXess shall only be liable for culpable failure to comply with the Agreement if Contractor serves proper and timely notice of default on MCXess in Writing, giving a reasonable period to remedy the defect, and MCXess has, even after that period, culpably failed to meet its obligations. The notice of default must contain the most detailed possible description of the defect so that MCXess is able to respond appropriately.

A.18.8. Any entitlement to compensation requires Contractor to report the damage within 30 days of its occurrence in Writing to MCXess.

A.18.9. Contractor indemnifies MCXess for all third party claims for liability due to a defect in a Product and/or Service provided to third parties by Contractor and which (partly) consist of a Product and/or Service from MCXess. Contractor indemnifies MCXess for all third party claims for noncompliance with obligations by Contractor and/or third parties (including Users and supervisors, such as ACM) which are under the responsibility of Contractor.

#### **Article A.19. Breakdowns and force majeure**

A.19.1. Neither party shall be obligated to meet any obligation when prevented from doing so due to force majeure.

A.19.2. Force majeure for MCXess is defined as any circumstance outside the will of MCXess as a result of which it is fully or partly hindered from meeting its obligations to Contractor or as a result of which MCXess cannot reasonably be expected to meet such obligations, regardless of whether that circumstance could be anticipated at the time when the Agreement took effect. Such circumstances shall, in every case, include:

- a) Emergency situations (such as extreme weather conditions, fire and lightning);
- b) Breakdowns in telecommunication infrastructure and the internet that are beyond the control of MCXess;
- c) Failures by parties on whom MCXess depends to provide Services;
- d) Imperfection of goods, hardware, software or Materials which Contractor has required MCXess to use;
- e) Government action, for example due to the absence of required permits.

A.19.3. If a situation of force majeure has existed for longer than one month, each of the parties may dissolve the Agreement in Writing. Work already done under the Agreement shall in that case be charged proportionately, but no other payment shall be due by one party to the other.



A.19.4. In case of force majeure Contractor is not entitled to any compensation or payment, even if MCXess has any advantage as a consequence of the force majeure.

#### **Article A.20. Personnel**

A.20.1. Contractor shall provide all necessary support to employees of MCXess carrying out work for the provision of Services at the premises of Contractor so that they can carry out their work.

A.20.2. Contractor is not permitted, as long as the relationship between Contractor and MCXess exists, and for one year after it comes to an end, to recruit employees of MCXess or otherwise to allow them to work for it directly or indirectly, without prior permission in Writing from MCXess. Employees of MCXess are defined in this situation as persons employed by MCXess or one of the associated companies of MCXess or employed by MCXess or one of the associated companies of MCXess no more than 6 (six) months ago.

#### **Article A.21. Confidentiality**

A.21.1. Parties shall treat information that they provide to each other before, during or after performance of the Agreement, as confidential if said information is marked as confidential or if the party receiving it knows or should reasonably suspect that the information was intended to be confidential. Parties shall also place this obligation on their employees and third parties deployed by them to perform the Agreement.

A.21.2. MCXess shall not obtain knowledge of data stored by Contractor and/or distributed via MCXess systems, unless this is necessary for proper performance of the Agreement or MCXess is obliged to do so under a legal stipulation or by order of a court. In that case MCXess shall make efforts to limit the knowledge of said data as far as possible, as far as this is within its power.

A.21.3. The confidentiality obligation shall persist after termination of the Agreement on any grounds whatsoever, for as long as the party providing information can reasonably claim that the information is confidential in nature.

#### **Article A.22. Expiry under limitation**

A.22.1. All legal claims of Contractor under the Agreement shall expire under limitation – except where prescribed by law – after one year from the date when compliance with obligations arising from the Agreement between the parties became claimable. This article is without prejudice to the regular period of expiry under limitation of claims by MCXess.

#### **Article A.23. Amendment of the Agreement**

A.23.1. If Contractor wishes to amend the Agreement, it may submit a request to that effect. The procedure and conditions for amendment are identical to those for inception of the Agreement, unless stated to the contrary.

A.23.2. Any change in name, residence or registered office, billing address or legal form must be immediately disclosed to MCXess in Writing. MCXess may impose additional conditions for acceptance of the consequences of a change in legal form.

A.23.3. MCXess reserves the right unilaterally to alter or supplement the Services, these General Terms and Conditions and SLAs, even with respect to existing Agreements. Contractual changes shall also apply to Agreements already in effect after a period of 30 days after notification of the change on the MCXess Website or by electronic message. Changes of subsidiary importance can be made at any time.

A.23.4. If the said change(s) has (a) significant negative influence(s) on the (use of) Services or on Contractor's position, Contractor may serve notice to terminate the Agreement, provided notification to that effect is received by MCXess before the date when the change takes effect. Contractor has no entitlement to compensation for damages arising directly or indirectly from the change in the Services.

#### **Article A.24. Assignment of rights, use by others**

A.24.1. Contractor is not authorised to assign the rights and obligations under the Agreement to a third party or to allow third parties to use the Services without permission in Writing from MCXess.

A.24.2. Contractor gives MCXess in advance a right, without requiring express permission from Contractor, to assign the Agreement between the parties in full or in part to parent, associated and/or subsidiary companies or to a third party in the event of merger or acquisition. MCXess shall notify Contractor in Writing if such assignment has taken place.

A.24.3. MCXess shall not be liable to the Contractor together with the party to whom the rights and obligations under the Agreement have been transferred for compliance with the obligations under the Agreement.

A.24.4. If Contractor allows employees or third parties to use the Services, such use shall be viewed for the purpose of defining Contractor's obligations as use by Contractor. Contractor is responsible for ensuring that such persons (entities) are placed under the same obligations as Contractor and Contractor is fully liable to MCXess for their actions.

**Article A.25. Final stipulations General Module**

A.25.1. The laws of the Netherlands shall exclusively apply to the Agreement and all legal relationships arising from or associated with it.

A.25.2. Unless otherwise required by law, all disputes arising from or associated with this Agreement shall be submitted to the court of first instance (rechtbank) of Amsterdam, with the understanding that MCXess is also entitled to submit the dispute to any court that is competent on other grounds.

A.25.3. If any stipulation of this Agreement is found to be invalid, this shall not affect the validity of the entire Agreement. Parties shall in that case define (a) new stipulation(s) to replace it, which shall as far as legally possible express the intention of the original Agreement and these General Terms and Conditions.

A.25.4. Information and disclosures on the MCXess Website are subject to programming and typographical errors. If there is any inconsistency between the MCXess Website and the Agreement, the Agreement takes precedence.

A.25.5. The version of any communication received or stored by MCXess (including log files and Call Detail Records) is considered to be authentic unless proven to the contrary by Contractor.

## Definitions

The terms used in these General Terms and Conditions, the Agreement, Service Level Agreement and similar documents shall be defined as follows:

1. Abuse & Improper use: Abuse or Improper use exists in every case where:
  - a) the Operator takes the view that Abuse or Improper use exists;
  - b) the use is contrary to statutory obligations;
  - c) it is viewed as such in the telecommunications sector or in society, for example but not necessarily set down in codes of conduct and the Covenant to counter the Improper use of Information numbers;
  - d) there is:
    - I. traffic to a specific Number that results in high consumption by the same mobile or fixed number, or from the same geographical location;
    - II. traffic that has not resulted in the correct tariffs being charged to End users;
    - III. traffic that can be identified as traffic whereby the identity of the End user does not correspond to the personal details provided by the End user to the telecommunications provider;
    - IV. a large number of "calls" shorter than 10 seconds to a Number.
2. Account: The right to access a user interface whereby Contractor can manage and configure (specific aspects of) the Services, as well as the stored configuration(s) itself (themselves).
3. ACM: The "Autoriteit Consument en Markt" (the Dutch Authority for Consumers and Markets) or a comparable body (including in countries outside the Netherlands) or a possible successor.
4. Affiliate Materials: All materials made available by MCXess to Contractor (acting as an affiliate partner), including banners, widgets and/or a URL consisting of the (business) name of Contractor as a subdomain.
5. Agent: A specific type of User, namely a call center employee of Contractor.
6. Agreement: Every agreement between MCXess and Contractor that arises from an offer or tender produced by MCXess for Services.
7. Chain Party: One or more Chain Parties exist if MCXess does not directly enter into a contract directly with an Operator for the supply of the infrastructure required for the Services or other Services.
8. Contractor: The person or entity with whom MCXess has entered into an Agreement. This also refers to those who enter into or are in negotiations with MCXess in this connection, as well as their representative(s), proxy (proxies), beneficiary (beneficiaries) and heirs.
9. Downtime: The period during which a Product and/or Service which is delivered as continuously as possible via the internet or another ICT network – such as hosting – is interrupted or suspended.
10. End user: The person or entity who purchases (information or content) services and/or products from Contractor, which services and/or products Contractor provides (partly) by using the MCXess Services.
11. End user Agreement: any agreement between Contractor (acting as distributor/reseller) and End user for which MCXess supplies one or more Services to Contractor.
12. General Terms and Conditions: The stipulations of this document.
13. In Writing: In these terms and conditions, in Writing means, in addition to text on paper given or delivered by or on behalf of Contractor to MCXess, also e-mail and fax communications, provided the identity of the sender and the integrity of the message are sufficiently certain.
14. Keyword: A combination of letters or digits used to request content services.
15. Materials: All websites (including the MCXess Website and the Affiliate Website), (web) applications, house styles, logos,

folders, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, designs, images, texts, drawings, documentation, recommendations, reports and other intellectual products that are related to the Services, including preparatory materials for these and the data carriers on which the Materials are recorded.

16. MCXess: The company MCXess B.V., registered in Amstelveen with the Chamber of Commerce under registration number 34162380.

17. MCXess Website: The website of MCXess, which can be accessed via the domain names <http://www.mcxess.com> and all associated sub-domains.

18. Numbers: Service numbers or telephone numbers for the purpose of providing Voice (Response) Services & Solutions.

19. Operator: An operator of fixed and/or mobile telecommunications networks.

20. Outpayments: Number-dependent and/or Operator-dependent charge billed by the Operator to the End user for the use of content services offered by or through the Contractor with the use of a Service, which – if and in so far as received by MCXess – will be transferred to Contractor.

21. Services: One or more product(s) or service(s) provided to or for Contractor by or on behalf of MCXess.

22. Service Level Agreement (SLA): The document, entitled Service Level Agreement, SLA, or something similar to this, in which MCXess links standards to the Services as concretely and measurably as possible.

23. Shortcode: A shortened number used for content which acts as a destination for or sender of messages.

24. Uptime: The period during which a Service which is delivered as continuously as possible via the internet or another ICT network – such as hosted (call center) solutions – is not interrupted or suspended.

25. User: The person who uses the software / application / Service provided by MCXess to Contractor. For example: Contractor's employees.

## **Module B. Services**

*This module is applicable to every Agreement in which MCXess provides Services (including Voice (Response) Services & Solutions and flat-fee SMS Services) to Contractor. Installation and delivery of the Services is described in the SLA.*

### **Voice (Response) Services & Solutions**

#### **Article B.1. Scope**

With respect to Voice (Response) Services & Solutions MCXess makes a distinction between the following product groups.

B.1.1. Free and Paid Telephone Numbers: MCXess provides to Contractor the use of free and paid service numbers in a large number of countries, plus where applicable value-added services and connection of calls to a final destination.

B.1.2. Local and Business Numbers: MCXess provides to Contractor the use of local and business numbers in a large number of countries, plus where applicable value-added services and connection of calls to a final destination.

B.1.3. Universal Freephone: MCXess provides to Contractor the use of free international service numbers (UIFN or 00800 service numbers) in a large number of countries, plus where applicable value-added services and connection of calls to a final destination.

B.1.4. Mobile numbers: MCXess provides to Contractor the use of mobile telephone numbers in a large number of countries.

#### **Article B.2. Characteristics and requirements**

B.2.1. Contractor may ask MCXess to activate Numbers for Contractor which MCXess, after approval, will activate within the national number database of the COIN association in the Netherlands and, if applicable, in an equivalent registration system abroad.

B.2.2. Unless agreed to the contrary the Numbers will remain activated for the Contractor for the duration of the Agreement.

B.2.3. MCXess offers Contractor the option to make a Number portable insofar as this is compulsory by law and under the regulations. MCXess is authorised to change a Number if this is considered necessary by MCXess, an Operator, the ACM or any other authority in the Netherlands or abroad.

B.2.4. Insofar as this arises from the Services, Contractor must request one or more Numbers for the use of the Services from the ACM or any other authority in the Netherlands or abroad. MCXess cannot influence and is not liable for whether or not Numbers are allocated by the ACM or any other authority in the Netherlands or abroad. Contractor has no entitlement to obtain a specific Number.

B.2.5. MCXess cannot, when transferring details that Contractor has provided for the purpose of possible publication in telephone directories or number information services, be held liable for the correctness, completeness and lawfulness of the information provided by Contractor.

#### **Article B.3. Terms and conditions of use**

B.3.1. Contractor shall ensure, and is responsible for, strict compliance with the legislation and regulations set out in the (Dutch) Telecommunications Act, similar legislation and regulations abroad, and codes of conduct and agreements that exist within the Telecommunications sector, such as the Memorandum of Understanding to counter the Improper use of Information numbers and other regulations, whether or not they are imposed by the government, such as the Code of Conduct for Promotional Games of Chance, such as shall be in force at any time. Contractor shall also comply with foreign legislation and regulations if applicable to the Services.

B.3.2. If Contractor uses Services from MCXess to provide (content) services to End users, Contractor shall inform MCXess of this in good time beforehand whereby MCXess shall be entitled and Contractor shall be obliged to inform third parties, including End user, of the costs of the (content) services and, in the case of periodical charges, the possibility of terminating / blocking this subscription.

B.3.3. MCXess shall, insofar as the Services lend themselves thereto and unless the Contractor has expressly excluded this in its request, make the name, address, company and/or profession available to Operators to allow these details to be included in public directories and for use in their information services.

## **SMS Services & Solutions**

### **Article B.4. Scope**

B.4.1. This module is applicable to every Agreement under which MCXess makes it possible for Contractor to receive SMS messages via 4-digit Short codes in the Netherlands and abroad and whereby Contractor can send Premium and Flat fee SMS messages in the Netherlands and whereby Contractor can make use of Premium and Flat fee SMS services abroad. Contractor also has access to the SMS Manager service in the Netherlands, whereby a simple click-torun system makes it possible to set up and manage various interactive SMS services.

### **Article B.5. Short codes and Keywords**

B.5.1. MCXess offers Contractor the opportunity to make a Short code portable insofar as this is compulsory by law and under the regulations. MCXess is authorised to change a Short code or Keyword if this is considered necessary by MCXess, an Operator, the ACM or any other authority in the Netherlands or abroad.

B.5.2. MCXess is authorised to allow a Keyword or reservation for a Keyword to expire if the Services are not used during a period of two months or if less than 50 messages per month are sent using the Keyword in question. Operators or Chain Parties may impose further obligations on the use of Keywords, in which case the said further obligations shall be applicable and the Keyword may lapse on the grounds of the said further obligations.

B.5.3. When using a shared Keyword, Contractor is not permitted to (allow or cause) actions to take place that may influence the amounts that would, in the absence of such actions, be payable by one party to another party, or the information tariffs that are payable for the use of content services or for consulting an information service. MCXess or a Chain Party is and remains the owner of the Keywords.

### **Article B.6. Terms and conditions of use**

B.6.1. Contractor shall ensure, and is responsible for, strict compliance with the regulations set out in the (Dutch) Telecommunications Act and codes of conduct and agreements that exist within the telecommunications sector, such as the Code of Conduct on SMS Services and other regulations, whether or not they are imposed by the government, such as the Code of Conduct on Promotional Games of Chance, such as shall be in force at any time. Contractor shall also comply with foreign legislation and regulations if applicable to the Services.

B.6.2. Contractor assumes full responsibility for the content of SMS messages sent by itself, its employees and third parties at its request. Contractor shall comply with all laws and regulations applicable to the content and intent of SMS messages and which are described in the Code of Conduct for SMS services. Contractor must refrain from sending SMS messages with aggressive, violent, discriminatory or any other illegal content. Contractor must do its absolute best to ensure that SMS messages are sent only to End users who have registered by means of so-called opt-in methods. Contractor is liable for all consequences and costs that may result from infringement of such laws and regulations and indemnifies MCXess for claims or fines by supervisory authorities (including the ACM or similar bodies abroad).

B.6.3. If Contractor uses Services from MCXess to provide (content) services to End users itself, Contractor shall inform MCXess of this in good time beforehand whereby MCXess shall be entitled and Contractor shall be obliged to inform third parties, including End user, of the costs of the (content) services and, in the case of subscriptions, the possibility of terminating / blocking this subscription.

### **Article B.7. SMS sending**

B.7.1. Contractor realises that MCXess is reliant upon IT companies, telecommunications companies and Operators for the sending of SMS messages. For that reason MCXess can only influence the provision and transmission of SMS messages within the technical limitations imposed by the said companies.

B.7.2. MCXess shall do its utmost to deliver the message to the recipient as quickly as possible.

## **Module C. Reselling**

### **Article C.1. Scope of application**

C.1.1. This module is applicable to Contractors classed as distributors/resellers of the Services, unless a separate reseller agreement has been entered into with Contractor (other than the reseller agreement of which these General Terms and Conditions form an integral part). In that case, the reseller agreement will take precedence at all times.

### **Article C.2. Reseller arrangements**

C.2.1. MCXess offers Contractor the opportunity to purchase and resell the Services.

C.2.2. Contractor will be given a license to offer the Services, including Numbers, as specified in the Agreement or the (online) application form, to End users at Contractor's expense and risk. MCXess is not a party to the End user Agreements.

C.2.3. Contractor does not have any exclusive right with respect to the existing and potential group of End users.

C.2.4. Contractor will provide its End users with an adequate level of support when they use the Services. MCXess may formulate additional guidelines in consultation with Contractor for the purpose of providing this level of support, to which guidelines Contractor will conform. If Contractor, within the scope of its support obligations, is unable to provide sufficient support to a Customer, then Contractor will approach MCXess to provide second-line support.

C.2.5. Contractor is only permitted to inform End users and third parties that it is a reseller for MCXess with respect to the Services and to inform them of the legal implications of this relationship.

C.2.6. MCXess has the right to refuse to deliver Services to the End user or to suspend the Services if MCXess wishes to do so due to competition concerns. MCXess will undertake to inform Contractor timely if MCXess anticipates that new orders placed by Contractor cannot be complied with, and that Contractor consequently cannot conclude or fulfil End user Agreements.

C.2.7. Contractor undertakes to strictly fulfil its obligations vis-à-vis its End users as described in the End user Agreement and in conformity with these General Terms and Conditions.

C.2.8. Contractor is obliged to provide honest and sincere advice about the Services to potential and existing End users. Contractor will refrain from providing any information about the Services that could be misleading or difficult to prove.

C.2.9. In offering the Services, Contractor will adhere to all relevant statutory provisions and regulations, as well as the rules of conduct generally accepted in the sector (e.g. the Code of Conduct for SMS services and the Covenant to counter the Improper use of Information Numbers).

C.2.10. Contractor will comply with all recommendations and reasonable requests of MCXess to the extent that these relate to the performance of the Agreement and an order and do not prejudice Contractor's independence.

C.2.11. If MCXess makes a system accessible to Contractor (provides an account), any actions taking place using the account will be regarded as taking place under the responsibility and at the risk of Contractor. Contractor declares that it will keep the access details to Contractor's account strictly confidential. In the event of suspected misuse of an account, MCXess must be notified as soon as possible to enable it to take measures.

C.2.12. Before purchasing the Services for End users, Contractor will follow the procedures of MCXess and pass on the conditions for the relevant Services to the End user. If an order is placed for a specific End user Agreement, Contractor is expected to ensure the duration and termination date of the End user Agreement coincides with the duration and termination date of the order.

C.2.13. Failure to pay on the part of End user does not discharge Contractor from any of its payment obligations vis-à-vis MCXess.

C.2.14. Progress on the objectives of the Contractor will be discussed by the Parties periodically and will serve as a basis for

evaluating the collaboration and for taking appropriate follow-up steps.

C.2.15. MCXess is entitled to request and inspect the End user Agreements. In the event of termination of the Agreement, MCXess is entitled to approach End users of Contractor with the aim of continuing to supply them with the Services.

C.2.16. At the first request of MCXess, Contractor will address any End users acting in violation of the General Terms and Conditions or otherwise improperly using a Product or Service. If legal measures prove to be necessary, in the first instance it is up to Contractor to take such measures. If Contractor fails to take the legal measures referred to above, Contractor is obliged to transfer the legal claim to MCXess upon first request.

C.2.17 During the term of the Agreement, Contractor shall not develop a Pricing Portal or use it for benchmarking purposes. The same applies to the MCIN engineering interface and the Online Shop for Business Communication Services. This includes providing third parties with confidential information about the Services with the aim of facilitating these third parties to develop competing services. Additionally, Contractor will refrain from any active acquisition among End users for competing Services during the Agreement.

### **Article C.3. Processing of personal data**

C.3.1. Contractor processes personal data through the Services. For this reason both Contractor and MCXess fall within the scope of the Personal Data Protection Act (“Wbp”), whereby Contractor is the ‘controller’ and MCXess the ‘processor’ within the meaning of the Wbp.

C.3.2. Pursuant to Section 14 of the Wbp the controller and the processor are required to conclude an agreement relating to the personal data processed by Contractor or MCXess. The provisions in this section apply as a data processing agreement as defined in the Wbp.

C.3.3. MCXess will ensure an appropriate level of security considering the risks involved in processing the data to be protected and the nature thereof. This will however only apply if and insofar as this data is located in MCXess’ infrastructure.

C.3.4. MCXess also guarantees that all persons acting under the authority of MCXess, insofar as they have access to personal data for which the controller is responsible, will only process such data on MCXess’ instructions.



## **Module D. Affiliate**

### **Article D.1. Scope of application**

D.1.1. This module is applicable to Contractors acting as an affiliate partner for the Services and Contractors using the Affiliate Materials made available by MCXess, unless a separate affiliate agreement has been entered into with Contractor (other than the affiliate agreement of which these General Terms and Conditions form an integral part). In that case, the affiliate agreement will take precedence at all times.

### **Article D.2. Affiliate arrangements**

D.2.1. Contractor undertakes to present the Affiliate Materials in the best possible manner and Contractor will refrain from any act that damages (or might possibly damage) the goodwill created by MCXess and/or the security of the intellectual property rights of MCXess.

D.2.2. Contractor will communicate under its own name and for its own account and risk when promoting the Affiliate Materials. Contractor may not present itself as being a part of, agent for or employee of MCXess, unless explicitly agreed otherwise in writing.

D.2.3. Contractor will follow any recommendations and reasonable requests made by MCXess insofar as these relate to the performance of the Agreement.

D.2.4. Contractor is not permitted to:

- a) violate applicable laws and regulations via the Affiliate Materials;
- b) promote the partnership between Contractor and MCXess without consulting and without the approval of MCXess;
- c) to register or operate trade names, trademarks, brand names, domain names or service user names (such as names on Facebook, Twitter or other third party services) which contain a brand and/or a trade name belonging to MCXess or which display a confusing resemblance to such;
- d) to display promotional communications in a way that is damaging or could reasonably be considered damaging to MCXess' reputation;
- e) make any expressions concerning the Affiliate Website that are inaccurate or that infringe relevant and applicable laws and regulations.

D.2.5. If MCXess has a reasonable suspicion that Contractor is acting contrary to the provisions in this article, it will notify Contractor of such. In this case, Contractor will cease and not resume the act in question as soon as possible but not later than 48 hours after receiving said notice. Following such notice, MCXess has the right to suspend the Affiliate Materials and the commission, and if the Contractor fails to cease the relevant action within 48 hours, MCXess may cancel the Agreement with immediate effect.

### **Article D.3. Commission**

D.3.1. During the term of the Agreement, Contractor has the right to commission on the transactions (hereinafter: "Transaction") generated through the Affiliate Materials as indicated on the MCXess Website and/or in the Agreement, or any annex thereto. Exceptions to Transactions as the basis for the commission for Contractor are collection costs, Outpayments, chargebacks and surcharges. MCXess is entitled to amend the amount of commission in the interim. Amendments also apply to Agreements already concluded with due observance of a term of thirty (30) days following notification of the amendment on the MCXess Website or by electronic communication. In the event Contractor does not wish to accept the amended Commission, it may terminate its affiliate partnership up to the date on which the new Commission takes effect. The foregoing termination shall not affect any other Agreements which are in place.

D.3.2. Contractor is not entitled to any commission other than the commission as described in the Agreement.

D.3.3. If a Transaction is cancelled, Contractor can make no claim for the commission in respect of that Transaction.

D.3.4. MCXess may refuse to pay commission for well-founded reasons, such as fraud.

**Article D.4. Reporting**

D.4.1. For the purpose of determining the results and commission, MCXess shall provide Contractor with detailed reports once a month.

D.4.2. The results reported by MCXess are decisive, unless Contractor is able to produce convincing evidence to the contrary.

**Article D.5. Payment**

D.5.1. Contractor is responsible for supplying the correct bank details for payment of commission. If Contractor has provided no details or if the details are incorrect, then MCXess has the right to postpone payment.

D.5.2. MCXess is authorized at all times to offset what it owes to Contractor with any amount that MCXess is entitled to claim from Contractor on whatever basis.

D.5.3. Contractor is responsible for the payments of any possible taxes or social security contributions that are owed on all payments that are made to it by MCXess.

**Article D.6. Privacy**

D.6.1. In the performance of the Agreement, MCXess acquires personal data of customers through the Affiliate Materials or otherwise. Contractor is not permitted to intercept personal data or to acquire these in any other way for any purpose other than the performance of the Agreement.

D.6.2. If Contractor acquires the personal data by other means and for other purposes, then it should be aware that it bears full responsibility for this. When processing the personal data, Contractor must comply with applicable laws and regulations.



# **MCXess**

Service Level Agreement MCXess B.V.

## Service Level Agreement

This Service Level Agreement (SLA) is part of the Agreement between MCXess and Contractor concerning the delivery of Services. This SLA describes the availability of the Services as well as the associated procedures and processes. For additional terms and conditions applicable to the Services, please refer to the MCXess General Terms and Conditions.

The definitions used in this SLA are described in the General Terms and Conditions. In addition, the following definitions will apply:

<b>Availability:</b>	The total length of time during which Contractor has actually been able to use the Services, expressed as a percentage of the total length of time measured during 1 (one) calendar year. The following are not included in the determination of availability: Scheduled Maintenance, force majeure, malfunctions caused by third parties, malfunctions caused by Contractor, improper use of a Product and/or Service and the improper functioning of telecommunications equipment, in whole or in part (other than the Services).
<b>Customer Care:</b>	Telephone operators available to help Contractor resolve any questions and/or issues.
<b>Scheduled Maintenance:</b>	The performance of operations to the infrastructure of MCXess, Operators and Intermediate Parties to the Contract, which takes place at a previously announced time.
<b>Response Time:</b>	The time between the moment at which a Malfunction is first reported and the moment at which MCXess first contacts (or attempts to contact) Contractor.
<b>Malfunction:</b>	The improper functioning of the Services purchased from MCXess, in whole or in part, compared to certain agreed upon specifications, resulting in an interruption of the provision of Services. "Malfunction" expressly excludes Scheduled Maintenance, the unavailability of Services due to any enhancements and additional customer wishes and any other items not contractually defined as such.

### **Article 1 - General Provisions**

- 1.1 This SLA pertains to the Services delivered by MCXess only. Telecommunications infrastructure of third parties, whether connected or not, including fixed connections and/or peripheral equipment, fall outside the scope of this SLA.
- 1.2 MCXess will make every reasonable effort to achieve the service levels described in this document.

### **Article 2 - Term and Termination**

- 2.1 The term of this SLA will coincide with that of the Agreement.
- 2.2 Termination of any MCXess Service will be subject to the terms and conditions and the notice period stated in the Agreement and the General Terms and Conditions.

### **Article 3 - Malfunctions and Response Times**

- 3.1 Malfunctions may be reported 24 hours per day, 7 seven days per week in any manner listed in Table 2: Contact Matrix.
- 3.2 Contractor will be charged for any costs associated with the handling of Malfunctions due to improper operation or use of the Product and/or Service by Contractor.

**Article 4 - Availability**

- 4.1 The Availability of the Services will be subject to the percentages listed in Table 1 in this SLA.

**Table 1: Summary of Availability, Malfunctions and Response Times.**

Product Module	Services
Availability	99,80% <sup>(1)</sup>
Indicated delivery time	Indicated delivery time depends on product and country.
Response Time	4 hours
Expected time to correct interference	P1 - 8 hours <sup>(2)</sup>
	P2 - 72 hours
	P3 - NA

Notes	
NA	Not applicable.
(1)	For value added services (such as IVR) an availability of 99,60% applies.
(2)	The expected time to correct the interference of Universal Freephone is based on best effort and may vary by country.
P1	Complete interrupted service due to interference.
P2	Partially interrupted service due to interference.
P3	Requests not reproducible interferences support. A P3 ticket is no interference with the consequence that there is no expected turnaround time.

**Table 2: Contact Matrix**

Support & Escalation	Position	Name	Email address (office hours)	Telephone number
Support	Support	Support	support@mcxess.com	+31 85 0014 522 (*)
Escalation Level 1	Service Manager	Frank Heijtlager	frank.heijtlager@mcxess.com	+31 85 0014 522 (**)
Escalation Level 2	Managing Director	Marcel Dijkstra	marcel.dijkstra@mcxess.com	+31 85 0014 522 (**)

Notes	
(*)	24x7
(**)	During office hours