

General Terms and Conditions of Access to the Services of Mobile-XS Inc.

1. Purpose

1.1. The Mobile-XS service enables the sending/receiving of bi-directional SMS/MMS/GPRS messages to/from telecommunication terminals on the networks of most of the telecommunication operators worldwide without requiring a specific infrastructure to be installed for the Customer. The General Terms and Conditions defined herein determine the conditions of access to the Mobile-XS Service and shall govern the relationship between the Customer and Mobile-XS Inc., acting in the capacity of Service Provider and on behalf of each of the local MXS subsidiaries.

1.2. Any sale proposal prior to the subscription shall not be part of the agreement between MXS and Customer. All contractual documents are listed in Article 3 below. Specific terms and conditions are defined in this entire document. In case of discrepancies among the contractual documents, the current General Terms and Conditions shall prevail.

2. Definitions

Customer: any subscribing entity to the MXS Services.

Mobile-XS Inc., hereafter referred to as "MXS", is a company registered in Fredericton, New Brunswick, Canada.

End User: any customer of any of the operators' networks to which MXS is connected.

Short Message Service (SMS): GSM telecommunication standard that allows users to receive or to send short alphanumeric-type (160-character), or binary-type (140-byte) messages to or from a GSM telephone.

Multi Media Message Service (MMS): form of communication that confers the ability to send rich content, such as audio, image, and video, together with text messaging. **Short Message or Multimedia Message Server Centers (SMSC/MMSC):** transmission platforms owned and operated by operators within the geographical territory.

General Packet Radio Service (GPRS): GSM telecommunication standard that allows users to receive or to send alphanumeric-type or binary-type data to or from a GSM telephone.

Operator: the telecom company that has been granted permission by public authorities of each geographical area concerned to operate one or more telecommunication networks to which Mobile-XS is connected or have an access.

Nominal Information: data collected by automated processing that directly or indirectly permits identification of the individual or legal entities to which they apply.

Private Correspondence: messages exclusively addressed to one or more specific and separate individual(s) or legal entity(ies) by way of telecommunications, signs, signals, text, images, or sounds.

Advertising SMS/MMS: SMS/MMS message with whole advertisement content sent by Customer on sole advertising or promotional purpose with or without prior

acceptance of end-user to receive it.

Mobile Originated (MO) message: A SMS that is generated at the hand-held terminal of the end user and received by the communication software of the MXS.

Mobile Terminated (MT) message: A SMS that is generated by the communications equipment of MXS or a Client and received by the hand-held terminal of the end user.

Premium SMS/MMS: A SMS/MMS which is charged as a premium on top of the regular fee for sending a MO or MT SMS/MMS.

3. Contracting a Subscription

3.1. Quotations and offers shall be based on the information provided by the Customer. The Customer guarantees that to the best of its knowledge, it has provided all essential information for the set-up and performance of the Contract. MXS reserves the right to adjust the prices should it transpire that the information provided by the Customer was incomplete or incorrect in whole or in part.

3.2. All quotations and offers shall be non-binding; they shall be valid for 30 days, unless the contrary is indicated in writing. MXS shall only be bound by the offers if acceptance hereof is confirmed by the other party in writing, unless indicated otherwise.

3.3. The subscription to the MXS Service is accepted upon receipt by MXS of the Quotation dated and signed by Customer and shall become effective when MXS provides the personal Access Code (the effective account opening date).

3.4. MXS shall supply Customer with a personal Access Code, in the exclusive person of its legal representative or any other person whom Customer shall have expressly designated to MXS.

4. Duration and Cancellation

4.1. The duration of the subscription shall run as from the effective account opening date, which is the access code delivery date, for twelve months, which term will be automatically renewed for successive one year periods unless cancelled by either party upon written notice to the other at least three months prior to the then maturity date of this subscription.

4.2. MXS shall be entitled to suspend or terminate the subscription at any time in the event of breach by Customer of any of its obligations as set forth in this document and/or in the event of any circumstances that might be construed as prejudicial by MXS.

4.3. The subscription may also be immediately terminated at any time in the event of one or several operator(s) withdrawal of Customer's authorization to use networks. The subscription may also be terminated within a thirty days' period from the date of notification by MXS of change of prices that would not suit Customer.

4.4. In the event that the subscription is terminated, regardless of the date and regardless of the party who initiates the termination, payment for current monthly fees shall be considered due to MXS,

without prejudice to any potential indemnities/damages which might also be payable by Customer.

4.5. Unless specifically stated otherwise, no payment will be the subject of a refund, even in the event of suspension, cancellation or transfer of Service before the end of the contractual period.

5. MXS Licensing

5.1. The subscription gives licensing for the usage of MXS Service as designated in the Quotation.

6. Pricing and Payment Terms

6.1. The pricing terms have been defined and agreed to in the Quotation and by the Customer's acceptance of them as defined in Article 3. However, MXS prices may change depending on possible fluctuations in the rate schedules of operators. Customer shall be first notified and shall be entitled to request early termination as provided for and within the timeframe described at article 4.

6.2. Payments must be effected within 15 days after the invoice or due date, whichever is earlier and unless otherwise stipulated in the Quotation.

6.3. MXS shall be entitled to suspend or terminate the subscription should Customer fail to pay any of the payments due.

6.4. If the payment term is exceeded, the Customer shall legally be in default, without the need for notice of default. In such case the Customer shall owe interest equal to the statutory interest, with a minimum of 1% per month, to be calculated as of the moment that payment should have been made.

6.5. If the Customer defaults on the (timely) performance of its obligations, all reasonable costs for extrajudicial settlement of the claim shall be at the Customer's expense. If the Customer is in default, MXS shall be entitled to suspend its work with immediate effect, without prejudice to its other rights.

6.6. Prices can change without prior notification.

7. Obligations of the Customer

7.1. Customer shall be solely responsible for the frequency, volume, and the contents of SMS/MMS messages or any other type of messaging using its service. Customer acknowledges that laws require the agreement of each end-user prior to the reception of SMS/MMS messages (opt-in). MXS shall be entitled at any time to ask for evidence of the end-users' prior acceptance and, where Customer fails to give such evidence, shall be entitled to suspend temporarily, or to terminate immediately, the subscription.

7.2. MXS shall be entitled to receive immediate compensation for any damages or penalties supported as a result of Customer's breach of any of its obligations under the current General Terms and Conditions.

8. Message Content

8.1. When necessary, payment of royalties originated by intellectual property rights on

message content shall remain the sole liability of Customer towards intellectual property owners as well as payment of any third party privacy and/or intimacy right. Customer has to comply with all laws and regulations regardless from which or to which geographical zones SMS/MMS/GPRS messages are sent, or which mobile telephone operator ensures the sending.

8.2. Prior consent from each end-user to receive SMS/MMS message is required (opt-in). Each end-user must be able to end easily and immediately the given prior consent (opt-out). Customer must ensure that exact prices of SMS/MMS MT and SMS/MMS MO are previously known, shown and accepted by end-user together with adequate and accurate information regarding the services provided.

8.3. All messages contents must comply with applicable laws and regulations regarding consumerism, public policy and ethic rules related to human dignity, civil rights, children's rights, equality of the sexes, the freedom and property of others, pluralistic thought and opinion, and, more generally public decency and laws regulating private correspondence.

8.4. Customer shall not process via SMS/MMS any violent or pornographic message that might be considered as a public policy offence.

8.5. MXS shall be entitled to suspend/terminate, immediately and at any time, the Subscription of any Customer who violates these rules or, more generally is in breach of the laws of any jurisdiction, or the applicable international conventions, codes or regulations but not limited to infringement of Intellectual Property Rights, defamation, theft, fraud, drug-trafficking, money-laundering and terrorism.

9. Obligations of MXS

9.1. MXS makes available to Customer access to its Service.

9.2. MXS undertakes to preserve the confidentiality of any information concerning Customer to which it might have access within the scope of its provision of its service.

9.3. MXS undertakes to ensure, by all possible and adequate means, the consistent quality and continuity of its service. However, MXS shall not guarantee total reliability in message routing and storing, which can be subject to interruptions of service by operator(s) due to, for example and not only, a possible failure of Mobile Operator SMS/MMS/C or MXS's network connection to Mobile Operator SMS/MMS/C, to radiotelephone interference caused by atmospheric conditions, interferences in wave propagations, the addressee of the message being outside of the operator's coverage area, frauds, or SIM card memory overload.

9.4. MXS shall be entitled to interrupt momentarily its service for testing and/or network traffic improvement operations.

9.5. MXS's obligations are "best effort" commitments, with the exception of confidentiality. MXS retains the right to make changes to its services whenever

necessary without prior approval of Customer.

9.6. MXS shall not be liable for messages delivered by operators directly to their Customers. More generally, MXS shall not be liable, in any way whatsoever except when MXS cannot legally waive its responsibility, for any direct or indirect damage, regardless of its origin or nature, caused or incurred by Customer during the supply of the MXS service.

10. Intellectual & Industrial Property

10.1. All products related to the service, including documentation, reports, and programs used or developed by MXS to implement the service for Customer under the General Terms and Conditions of this agreement shall belong to MXS.

10.2. Any invention, discovery or improvement involving ideas, designs, methods or computer techniques conceived by MXS's personnel in connection with this agreement shall belong to MXS.

11. Liability

11.1. The parties agree that the professional responsibility of MXS under this agreement shall be limited to direct and actual money damages effectively incurred by Customer; the liability of MXS hereunder shall not in the aggregate exceed the total fees paid by Customer to MXS for services rendered under this agreement, regardless of the number of claims.

11.2. In no event shall MXS be liable for special, indirect or consequential damages or both, even if MXS has been notified of the possibility of these damages being incurred. Customer waives any claim and recourse against MXS in these instances.

11.3. Customer agrees that MXS, its employees, officers and directors, shall not be liable for any losses or damages caused to Customer, its employees, associates and clients, arising from the provision of the services by MXS. These losses or damages include without any limitations the loss of data, damage to data, personal losses, business losses, loss of business opportunities, financial losses and losses or damages of any other nature.

11.4. Customer also agrees that MXS, its employees, officers and directors will not be liable for any claim against Customer made by any third party. Customer waives any claim and recourse against MXS in these instances and Customer will hold MXS harmless from any third party claim.

12. Miscellaneous

12.1. Customer accepts the processing of its personal data as part of the current General Terms and Conditions. Customer declares that it has given advance notification and has obtained authorization from parties whose names and details have been provided to MXS.

12.2. Customer is informed that the present General Terms and Conditions are subject to change at any time. The online version on the MXS website will prevail over any other version of these General Terms and Conditions.

12.3. The fact that either or both parties did not require, temporarily or definitively, the enforcement of a provision of these

General Terms and Conditions shall not be regarded as a renunciation to the rights held by this party. No exchange of correspondence, written documents, electronic mail etc. can overwrite these General Terms and Conditions unless an additional clause has been signed by both parties.

12.4. Customer authorizes MXS to quote Customer, including its website, as a commercial and/or advertising reference.

12.5. Customer may not without MXS's prior written approval assign, transfer or license its Subscription or any of its other rights under the Agreement or sub-contract any of its obligations. MXS may assign or sub-contract any of its rights under the Agreement and may sub-contract any of its obligations.

13. Notices

13.1. Any notice to be given or served under these General Terms and Conditions shall be in writing and shall be delivered personally or sent by facsimile or by first class post to the party to be served at the address set out in either the Order Form or Site or the Registered Address and shall be deemed to have been served: -

(a) immediately in the case of personal delivery;

(b) in the case of facsimile on the next business day following the time of transmission subject, in the absence of a written acknowledgement, to the original notice being sent by post or by personal delivery in accordance with this clause not later than the next business day after such transmission; and

(c) in the case of postal delivery, on the second business day following the date of posting (the fifth business day if posted to another country) or on acknowledgement of receipt if sooner.

14. Applicable Law

14.1. This agreement shall be governed by and interpreted according to the laws of the Province of New Brunswick, Canada. This agreement constitutes the complete and final agreement between the parties and supersedes all previous discussions, representations or undertakings, whether oral or written.

15. Jurisdiction

15.1. The Commercial Court in Fredericton, New Brunswick, Canada shall have sole jurisdiction in the event of any dispute regarding the conclusion, interpretation, enforcement or execution of any or all parts of these General Legal Conditions and the entire agreement between MXS and Customer.

16. Registered Address

16.1. The registered address MXS' s head office is Suite 300, Fredericton Square, 77 Westmoreland Street, P.O.Box 730, Fredericton, NB E3B 5B4., Canada. Each party shall immediately inform the other one of any change of address details.