

Standard Terms and Conditions

These are the standard terms and conditions which apply to the Services provided by Mobily hereunder.

Definition of Terms

In this Agreement the listed words shall have the following meanings unless otherwise indicated:

Agreement	Is this Managed Server Service Agreement signed and stamped by the Customer for the purpose of subscribing to the Services.
Business Days	Sunday through Thursday excluding public holidays in Kingdom of Saudi Arabia (KSA).
Business Hours	From 08:00 am to 05:00 pm during Business Days.
Case	Any type of failure, slow response times, or degradation in the Services; includes amongst others outage incidents. Problems pertaining to Customer's equipment, software, website, or running applications are excluded.
Commencement Date	The date specified in Schedule A.
Customer	The company or individual so named in Schedule A of this agreement. The Customer includes persons/entities to whom the Customer has authorized in writing to act on behalf of the Customer.
Downgrade	Downgrade is the process of moving from one Service package that is higher in features to another package that is lower in features, or deleting/decreasing any feature or sub-service within the package.
Facility	The premises of Mobily (ie. Data Centre) referred to in Schedule B.
Facility Downtime	Is any Service interruption, only if such interruption is due to either a facility power failure or an environmental control failure.
Fee	The monetary consideration to Mobily for the Services referred to in Schedule B.
Force Majeure Event	means an event beyond the reasonable control of the affected Party, including but not limited to industrial disputes of any kind, war (declared or undeclared), blockade, disturbance, a natural disaster such as lightning, earthquake, storm, flood, explosion or meteor, law, marine accidents, any power lawfully exercised by a government agency, any change in any applicable law, inability or delay in granting governmental or other approvals, consents, permits, licenses or authorities, or telecommunication network outage or degradation, which failure cannot be remedied by the affected Party through its exercise of due care and prevents such Party from performing its obligations under this Agreement.
Handling Time	The period the Customer is covered by support from Mobily which is 24 Hours x 7 Days 1 Week x 365 Days.
Initial Term	The term referred to in Schedule A.
Migration	The process of moving from one Service to another Service.

Mobily	Is Etihad Etisalat Company that provides the Services to Customer hereunder.
MPP (Minutes per Period)	Measures the total number of minutes per a period of time. Example: For a thirty (30) days month, MPP = = No. of days x No. of hours per day x No. of minutes per hour = 30 days x 24 hours x 60 minutes
Party	Mobily or Customer and both are collectively referred to as "Parties".
Policy Change	Changing of specific Service configurations.
Provisioning	The process of preparing the infrastructure to allow it to provide the Service to the Customer up to the activation of Service.
Resolution Time	The period commencing when a valid Case reports is received by Mobily, and ending on the first to occur of: The Service is returned to full working order, or; A temporary repair is performed which allows the Service to be used.
Response Time	The period commencing when a valid Case report is received by Mobily, and ending on the first occurrence when: Mobily advises the Customer that the fault has been identified by remote diagnostics and that work has commenced to identify the fault; Mobily advises the Customer that a site visit is required, or When a Mobily representative attends the site.
RFS (Ready for Service)	Means when the Customer is notified that provisioning of a Service is complete and the Service is ready for usage.
Services	Those services to be provided by Mobily to the Customer referred to in Schedule B.
Service Credit	The compensation the Customer is entitled to in accordance with the SLA. It is equivalent to one (1) calendar day of the Service Monthly Fee associated with any specific service. Example: For a thirty (30) days month, if the Service Monthly Fee = SR 1,000. Service Credit = = Service Monthly Fee ÷ No. of days in a month = SR 1,000 ÷ 30 days = SR 33.33
Service Standard	The standard of Service provided by Mobily under this Agreement as set out in Service Level Agreement attached hereto.
UAT (User Acceptance Testing)	Means the process of obtaining the Customer confirmation that the Services meet their requirements.
Upgrade	Upgrade is the process of moving from one Service package that is lower in features to another package that is higher in features, or adding/increasing any feature or sub-service within the package.

Ownership and License

"Materials" are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, designs, reports, drawings and similar works) that Mobily may deliver to Customer as part of the Service.

Mobily or its suppliers will own the copyright in Materials created or supplied as part of a Service. Mobily grants Customer an irrevocable, nonexclusive and worldwide license to use Materials subject always to the license provisions enforced from time to time by Material's owner. Customer understands and acknowledges that some of the provided Materials cannot be used unless Customer signs the license agreement of such materials.

Mobily or its suppliers retains ownership of the copyright in any of the Materials and/or Mobily's or its suppliers' works created during the Service performance period or that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are enforced by the owner of any Material, such Material and/or works are licensed in accordance with the owner's licensing requirements, if any. In absence of which (as the case for some free software), Customer warrants and guarantees that the use of such Materials shall be at all times in accordance with laws and regulations governing the use thereof. Customer agrees not to reproduce the copyright notice and any other legend of ownership on any copies made under the license granted hereunder.

Except as permitted by the Material's owner license terms or otherwise by KSA laws, no part of the Service (including Materials) may be reproduced, transmitted, copied, published, republished, mirrored, uploaded, posted, displayed, encoded, decoded, subjected to reverse engineering, translated, transmitted or distributed in any form or by any means or stored in any retrieval system of any nature in any way without Mobily' consent.

Indemnification

Customer agrees to defend, indemnify and hold Mobily harmless from and against any and all claims, losses, liabilities and expenses (including reasonable solicitors' fees) related to or arising out of the Services provided by Mobily to Customer under this Agreement, including without limitation claims made by third parties (including customer's of the Customer) related to any false advertising claims, liability claims for products or services sold by Customer, claims for patent, copyright or trademark infringement, claims due to disruption or malfunction of Services provided here-under, or for any content published by Customer using the Services, but excluding those directly caused by the negligence of Mobily.

Limitation of Liability

Mobily shall not be liable to the Customer for damages resulting from or in relation to any failure (including loss of data) or delay by Mobily to meet its obligations under this Agreement unless such delay or failure is a direct result of Mobily's actions or negligence.

Unless it is a direct result of Mobily's actions or negligence, such a failure or delay shall not constitute a default under this Agreement and Mobily's directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer out of, in connection with or reasonably incidental to the provision of the Services by Mobily to the Customer.

While Mobily uses all reasonable care in providing the Service, Mobily shall not have any liability whatsoever in respect of any loss or damage incurred by Customer and resulting from information provided in relation to the Service.

Mobily's liability in the event of failure to provide the Service shall not extend beyond the cost of providing the Service during the month preceding the default.

Mobily shall not be liable to Customer (or Customer's customers) for any loss of profit, loss of revenue, loss of goodwill, loss of anticipated savings, loss of customers, loss of data or interference with business or for any indirect, special, or consequential, loss or damage whether or not caused by or arising out of the acts or omissions or negligence of Mobily, its employees or agents or whether or not caused by, arising out of the performance or failure to perform under this Agreement.

Refusal of Service

Mobily retains the right to refuse providing Services to the Customer. Refusal of Service may apply if: (a) the Customer fails to pay Mobily dues within the time limit set forth in this Agreement; (b) if the Agreement is terminated; or (c) if the Customer misuses the Services or fails to comply with the Customer's obligations under the Agreement.

Suspension and Termination

Mobily shall be entitled, at its sole discretion, to suspend the Service forthwith at any time with or without notice to Customer in case of a material breach to the Agreement by the Customer that might, in Mobily's opinion, expose Mobily to legal risks including, without limitation, Customer's violations to the laws and regulations (including CITC regulations) or the misuse of the Service.

Mobily, at its sole discretion, may suspend the Service for Customer's non-payment on the due date on the sixth (60th) day of Customer's failure to pay on the respective payment due date.

Mobily, at its sole discretion, may suspend the Service for any reason and at any time by giving not less than thirty (30) days written notice thereof to the Customer.

Mobily may terminate this Agreement, in whole or in part, upon written notice to Customer if (i) Customer is deemed unable to pay its debts under relevant insolvency legislation, convenes a meeting with its creditors generally with a view to the general readjustment or rescheduling of its indebtedness, makes a general assignment for the benefit of its creditors, takes any action for voluntary winding up, enters into a scheme of arrangement with its creditors, has an administrator, receiver, trustee or similar officer appointed over all or any part of its business, or if a petition is presented for the compulsory winding-up or dissolution of the Customer, or if a petition or receiving order in bankruptcy is presented in respect of the Customer; (ii) Customer fails to make any payment required hereunder when due, and such failure continues for a period of ninety (90) days from the payment due date, (iii) Customer commits a material breach of this Agreement (other than payment terms) and such breach continues for a period of fifteen (15) days after written notice from Mobily or, (iv) Mobily received an instruction or order from governmental authority prohibiting the provision of any Service hereunder and in such case, termination shall be limited to the Service subject to such prohibition.

In events of termination in accordance with the terms & conditions of this Agreement, Mobily shall not be liable or responsible to Customer for any violation or breach resulting out or in connection with such termination. Moreover, Mobily will not undertake to pay any losses, expenses or compensations claims raised by Customer regarding this termination.

Upon termination or expiration of this Agreement, all amounts outstanding shall immediately become due and payable.

Mobily shall always have the right to terminate this Agreement for its convenience and without assigning any reason serving 15 days notice to Customer.

Force Majeure

Neither Party shall be liable for any failure to perform or breach of this Agreement caused by Force Majeure Event provided that Customer shall not be relieved of its obligations to make any payments for Services rendered under this Agreement.

The Party invoking Force Majeure Event must immediately inform the other Party if a Force Majeure Event has occurred. Responsibilities and obligations specified in this Agreement are subject to immediate fulfillment after the end of Force Majeure Event circumstances unless otherwise agreed to jointly in writing by the Parties.

Both Parties shall use reasonable commercial endeavours to minimize the effects of a Force Majeure Event.

Non-Disclosure

«Proprietary Information» is defined as information of any nature in any form including drawings, specifications, data, graphs, charts, discussions and the like which has been reduced to written form and relates to the Purpose. The Disclosing Party shall identify its Proprietary Information as «Proprietary» with an appropriate legend, marking, stamp, or other obvious written identification. Proprietary Information shall also include oral disclosures provided that the oral disclosure is reduced to writing in summary form, marked as «Proprietary» or «In Confidence», as appropriate, and delivered to the Receiving Party within thirty (30) days of the oral disclosure and provided that the proprietary nature of the information has been indicated at the

time of such disclosure. Notwithstanding anything contained in this clause, information (written or oral) shall also be deemed to constitute Proprietary Information if, under the circumstances surrounding disclosure, it reasonably should be treated as Proprietary Information.

Upon receiving Proprietary Information, the Receiving Party shall keep in confidence and not disclose to any person or entity, not bound by this Agreement, any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. Nevertheless, Mobily reserves the right to disclose the Disclosing Party's Proprietary Information to Mobily's board members, shareholders, banks and advisors. The Receiving Party shall exercise the same degree of care to guard against disclosure or use of such information, except as provided herein, as Receiving Party employs with respect of its own Proprietary Information of like importance, but in no event, less than reasonable care.

The Receiving Party will make the Disclosing Party's Proprietary Information available only to those of its employees having a «need to know» in order to carry out the Purpose. Further, the Receiving Party shall not use such Proprietary Information except for the Purpose identified above without the prior written approval of the Disclosing Party.

The Receiving Party shall not be liable for the disclosure or use of Proprietary Information if the same is: in or enters the public domain, other than by breach of this Agreement.

known to the Receiving Party at the time of first receipt or thereafter become known to the Receiving Party without similar restrictions from a source other than the Disclosing Party, as evidenced by written records or other evidence.

developed by the Receiving Party independent of any disclosure hereunder as evidenced by written records or other evidence. first disclosed or used by the Receiving Party more than three (3) years after the date upon which the particular Proprietary Information was received from the Disclosing Party; or

disclosed pursuant to an order of court of competent jurisdiction or under any written law provided that reasonable written notice is given to the Disclosing Party before such disclosure.

The Receiving Party hereby agrees to advise each of its employees or agents participating in the activity related to the purpose that they are obligated to protect the Disclosing Party's Proprietary Information as prescribed in this Agreement.

The obligations and responsibilities of the Parties hereto shall survive and continue in full force and effect beyond the termination of this Agreement and for a period not less three (3) years from receiving the Proprietary Information by the Disclosing Party.

All written Proprietary Information shall be returned to Disclosing Party or destroyed by Receiving Party at the Disclosing Party's option, after the expiration of the Agreement, or when requested by Disclosing Party, at any time. In the event of destruction, Receiving Party shall certify in writing to Disclosing Party, within thirty (30) days, that such destruction has been accomplished. Receiving Party shall make no further use of such Proprietary Information.

The disclosure of Proprietary Information hereunder shall not be construed as granting either a license under any patent or patent application or other intellectual property or any right of ownership in said Proprietary Information. Nor shall disclosure constitute any such representation, warranty, assurance, guarantee or inducement by the Disclosing Party with respect to the accuracy of the Proprietary Information or against infringement of patents or other rights of third parties.

The Receiving Party acknowledges that unauthorized disclosure of Proprietary Information is likely to cause substantial and irreparable damage to the Disclosing Party and therefore in the event of any such breach, in addition to other available remedies, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.

Changes

Mobily reserve the right to amend, modify or substitute the terms, conditions and service levels of the Services serving three (3) months advance notice before their effective date.

Assignment of Agreement

Customer may not assign its rights under this Agreement without the express prior written consent of Mobily, which will not be unreasonably withheld or delayed. This Agreement shall apply to any permitted transferees or assignees. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all Charges due hereunder.

Mobily has the right to transfer or assign the Agreement to third parties without reverting to Customer.

Compliance with Laws

Customer must abide by all applicable local laws, treaties and regulations (including CITC regulations).

Customer acknowledges and agrees that: (a) it is duly organized and validly existing under the laws of KSA, and duly authorized to enter into this Agreement and to perform his obligations under this Agreement; (b) Customer's entry and performance of this Agreement does not constitute the default of any obligation to which Customer is bound by under the related laws and regulation; (c) the enter into this agreement does not knowingly violate any applicable laws (including CITC regulations) to which Customer is subject or any agreement or contract to which Customer is a party or which Customer is bound by; (d) Customer shall comply with all Applicable laws (including CITC regulations) in performing his obligations under this agreement and Customer will use best endeavors to obtain and will continue to be duly qualified and licensed under CITC regulations and KSA laws to use the Service specified in this Agreement; (e) Customer holds all necessary licenses permits and authorization (if needed) for the performance of his obligations under this Agreement.

Governing Law & Disputes resolution

This Agreement shall be governed, and construed in accordance with the laws and regulations of the Kingdom of Saudi Arabia. Any dispute between or among the Parties which may be arising from or in connection with Agreement shall be settled amicably by the Parties. If the Parties are unable to amicably resolve the dispute within 15 days from the date dispute has arisen, either Party may refer the dispute for final judicial determination by the competent Saudi authority.

Notices

Notices hereunder shall be in writing and may be delivered in person, or by facsimile (confirmed by transmission report), overnight courier, electronic mail (if an e-mail address is provided below) or by first class post, addressed as per the contact details communicated by each Party to the other within 3 Business Days of signing this Agreement. In absence of which, notices shall be sent to the Parties addresses set forth in Schedule A of this Agreement.

Survival

Those conditions of the Agreement that are of continuing nature shall survive termination of the Agreement.

General

No waiver by either Party of any provision in this Agreement shall be binding unless expressly confirmed in writing. Further, any such waiver shall relate only to such particular matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality, or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

This Agreement constitutes the entire agreement and understanding between the Parties with respect to the Service(s) and supersedes and replaces any prior written or oral agreements, representations, arrangements or understandings between them relating to the Service(s).

Customer has to ensure that all the terms and conditions of this Agreement are adhered to by their end customer.

Acceptable Usage Policy

The objective of the Acceptable Usage Policy is to make clear which activities must not be engaged in whilst using Services provided by Mobily.

Acceptance of changes

Mobily may from time to time vary the Acceptable Usage Policy.

Unauthorized Access

Gaining or attempting to gain access without authorization to computers, networks or accounts owned by Mobily or any external party will not be accepted. Activities related to attempts to gain access to Mobily's computer or equipment, or such equipment owned by other parties will not be accepted. Such activities may include scans or other information gathering activities. If any of the aforementioned prohibited actions is discovered by Mobily, Mobily has the right to isolate the server immediately, and inform the Customer to act on clarifying that behavior/connections, or to help in provide any necessary actions as required. The server will be reconnected to Mobily's network once Mobily ensures that the causes of the aforementioned attempts are no longer exist and there is no threat to Mobily network.

Copyright and Intellectual Property Violations

Mobily will not monitor or interfere with content published on Customer equipment. Users of our services should at all times ensure that all information published and made accessible to the general public is not in breach of any applicable Copyright or Intellectual Property Claims.

Condition of Use

Customer shall not use the Service(s) provided for: a) sending messages that cause any threat, harassment, annoyance, inconvenience, or needless anxiety to any person, entity, or company whomsoever, b) any other misleading, criminal or unlawful purposes including but not limited to hacking, vice, gambling, obscenity; or for carrying out any activity that contradicts with the social, cultural, political, economical, moral, and/or religious values and interest of the Kingdom of Saudi Arabia state, government or people.

Use of Information

Customer agrees to use the Service solely for Customer's personal, lawful purposes and that Customer shall not use any information or links contained in the servers in any claims, proceedings, suits or actions against Mobily, its suppliers or affiliates. Customer may not:

- post, upload, publish, display, encode, reproduce, transmit or otherwise distribute and/or disseminate information or material that: (i) constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability; (ii) which is protected by copyright, or other intellectual property right or derivative works thereof, without obtaining permission of the rights holder; (iii) promoting racism, bigotry, hatred or physical harm of any kind against any group or individual, could be harmful to minors, or harasses or advocates harassment of another person; (iv) which solicits passwords, personal information, funds, goods and/or Services/ Products or otherwise solicits information for commercial or unlawful purposes (v) that contains advertising;
- engage in any conduct that impersonates any person, licensed professional, business or entity, including our employees and agents;
- otherwise use the Service in a way that is contrary to law or which could adversely impact use of the Site or the Internet by other users including the posting or transmitting of other information or software containing viruses or other disruptive components.

Mobily reserves the right (but not the obligation) at our sole discretion to refuse or delete any user content and/or to suspend or terminate the Service without notice upon a violation of attempted violation of these terms or for any other reason.

Links

This Service may contain links to other web sites that are not under the control of Mobily. Mobily is not responsible for and makes no representations or warranties concerning the contents of any linked site, any information collection, use or disclosure practices through a linked site or any link contained in a linked site (collectively the "Linked Sites"). It is Customer's responsibility to verify any information contained within the Linked Sites before relying on it. Also, the information contained in the Linked Sites may be changed or updated at any time without notice. The links are provided to Customer only as a convenience and the inclusion of any link does not imply endorsement, investigation or verification by Mobily of the Linked Site. Customer's use of Linked Sites is at Customer's own risk and may be subject to terms and conditions contained in the Linked Sites, which Customer should locate and review.

Content

All text, comments, messages information, data, graphics, interfaces, articles, photographs, images, illustrations, artwork, software, trademarks, logos, sounds, music, video and code, including but not limited to the design, structure, selection, co-ordination, expression, "look and feel" and arrangement of the foregoing, (together "Content") on the Service is proprietary and is owned, controlled or licensed by or to Mobily, and is protected by all Applicable Laws and rights (including but not limited to) trade mark and copyright laws, various other intellectual property rights and laws and unfair competition laws. Mobily grants Customer non-exclusive and non-transferable right to use the "Content" and the Service provided that: (i) Customer does not remove any proprietary notices, (ii) such use is for personal, non-commercial purposes, (iii) Customer does not share or make accessible such information on any networked computer or broadcast of any sort, (iv) Customer makes no modification to such information and (v) Customer does not make any claims, representations or warranties with respect to such information.

User Content

By posting or uploading to the Service any text, comments, messages, information, data, graphics, articles, photographs, images, illustrations, artwork, software, trademarks, logos, sounds, music, video, code or any other form of content or information (collectively «User Content»), Customer warrants that he owns all rights and/or have obtained all third party consents and/or waivers and/or permissions and/or licenses (hereafter "Clearances") with respect to the User Content and that: (i) neither Customer nor any third party will object to the use of User Content by Mobily in any manner; (ii) Clearances are obtained in Customer's name, address and/or e-mail address appearing as the contributor of any User Content that Customer may post, share or otherwise associate with the Service as applicable, and to the disclosure and/or display of such information and any other information which appears in or is associated with the User Content; (iii) Customer acknowledges and agrees that Mobily is not responsible for any loss, damage, or corruption that may occur to the User Content or any content that Customer may claim to be his; and (iv) Customer acknowledges and agrees that any User Content that Customer provides for display within the Service will be considered non-confidential. Mobily may edit or remove any or all User Content that is in violation of the provisions of these terms, without incurring any liability as a result thereof. Mobily is not responsible for User Content in any way. Customer understands and agrees that Mobily shall not be liable for any access to, use of or disclosure of any information Customer included in any such User Content