

# Mobily Business Internet & Connectivity Service Terms and Conditions

## 1. General

- 1.1 Etihad Etisalat Company, a Saudi joint stock company, under Commercial Registration No. (1010203896), issued in Riyadh, P.O. Box 9979, Riyadh 11423, Kingdom of Saudi Arabia (referred to herein as "Mobily") will provide the customer identified herein below (the "Customer") with internet and connectivity as detailed in: a) the order form issued hereunder (the "Order"); and b) Mobily proposal attached hereto (the "Proposal") and in compliance with these terms and conditions (the "Base Terms"). Which services shall be referred to hereunder as "Services".
- 1.2 Mobily and Customer shall be referred to hereunder individually as "Party" and collectively as "Parties".
- 1.3 The Services and Parties relation hereunder shall, at all time, be governed by all laws and regulations of the Kingdom of Saudi Arabia including, without limitation, those of Communications and Information Technology Commission (CITC).
- 1.4 The "Base Terms" as well as each Order and Proposal signed by Customer for specific Service constitute the entire agreement and understanding between the Parties concerning the ordered Service and supersede, and replace any prior written or oral agreements, representations, arrangement or understanding between them relating to the Service. For each Service ordered by Customer, the Base Terms, the respective Order and Proposal shall collectively be referred to hereunder as the "Contract". In case of conflict between the provisions of the Contract documents, the order of precedence shall be 1) the Base Terms, 2) the Proposal then 3) the Order.
- 1.5 Services specification, features, commitment, conditions, charges, fees, limitations and duration are included in the Order and Proposal.
- 1.6 Customer's data and information are detailed in the Order.
- 1.7 The Parties confirm that they have not entered into this Contract by, and have not relied upon, any statement, representation, warranty or other assurance except to extent explicitly incorporated into this Contract.
- 1.8 The only remedy available in respect of any misrepresentation or untrue statement made to it will be claimed for breach of contract under this Contract. However, nothing in this clause will limit or exclude any liability for fraud.
- 1.9 Customer shall be bound by and shall fully observe and comply with all terms and conditions stated in this Contract.

## 2. Service Request

- 2.1 Customer's order to the service shall be considered in effect when the Customer signs the Contract documents (the Base Terms as well as the Order and the Proposal of the ordered Service) prepared by Mobily. Customer may issue Customer's official purchase order (the "PO") for the ordered Service, however, any terms and conditions included in the PO that are not part of the Contract documents shall be considered null, void and with no effect.
- 2.2 Customer shall sign the Base Terms once together with the first Order and Proposal. Thereafter, for any subsequent Service request, Customer shall not sign the Base Terms again but only the Order and the Proposal of the new ordered Service and the Base Terms signed earlier by Customer shall govern the subsequent Order and Proposal as if there were re-signed by Customer together with each subsequent Order and Proposal.
- 2.3 For each Service ordered by Customer hereunder, Customer acknowledges and agrees that Mobily had conducted an initial coverage survey (the "Soft Check") for Customer's sites (the "Site(s)") and the results of which are included in the Proposal. Customer acknowledges and agrees that the Soft Check should not be considered as an official commitment for the provision of the Service to the respective Sites and that the final coverage and service availability survey (the "Final Check") results and confirmation for the Provision of Service will be provided by Mobily to Customer after Customer signature to the respective Contract documents. The Final Check might reveal that, for conditions that were unforeseen at time of Proposal/Order, Service cannot be provided to a certain Site (or Sites) or that it can be provided conditional on additional Charges to be paid by Customer. In either case, Mobily shall notify the Customer in writing with the results of the Final Check and, if the Service can be provided conditional on additional Charges to be paid, within three (3) business days, Customer shall be at liberty either to sign a revised Order with the new Charges for the provision of the Service or to notify Mobily in writing that the Site (or Sites) in question are cancelled from the Order (or cancelling the whole Order as applicable). Customer's failure in notifying Mobily with its decision within the aforementioned three (3) business days shall be deemed as cancellation to the Site (or Sites) or Order in question (if the whole

Order was made for the cancelled Site(s)). Site (or Sites) or Order cancellation shall be without any liability on Mobily for whatsoever damages incurred (or may be incurred) by Customer as a result of such cancellation.

2.4 In case of positive Final Check results, Mobily shall proceed with the delivery process and notify the Customer of the Order acceptance.

### 3. Service Delivery Acceptance

- 3.1 As a condition precedent to the provision of Service, Customer shall grant Mobily unrestricted access to the Sites and perform all its obligations set forth in the Proposal with due diligence.
- 3.2 Upon completion of Service installation and commissioning, Mobily shall notify Customer that Service is ready for testing and Customer's acceptance. Within (2) business days from the aforementioned notification date, Customer shall test the Service and sign the User Acceptance Test (UAT) form, unless test results revealed major shortfalls that make the Service not functioning as specified in the Contract. Upon discovery of the aforesaid major faults and within one working day from the test date, Customer should provide Mobily with a written notice with the test shortfalls insufficient details. If Customer: a) did not provide Mobily with the signed UAT form within (2) business days from Mobily's notification date that the Service is ready for testing or, b) did not provide Mobily with a written notification within one business day from the test date that the test results revealed that the Service does have major shortfalls supported by the necessary proof then, Mobily will have the right to suspend the Service without any liability on Mobily. If Customer fails to sign the UAT form or provide valid reasons for not signing it within (1) month from Mobily's notification date to the Customer that the Service is ready for testing, Mobily shall have the right to permanently disconnect the Service and charge Customer for all installation costs in addition to one month recurring Service charge as a penalty.
- 3.3 In the event Customer notifies Mobily within the period stated above that the test results revealed that the Service does have major shortfalls supported by the necessary proof, then Mobily shall correct any deficiencies in the Service, and Service testing process set forth above shall be repeated.
- 3.4 Service Change Requests related to BW upgrade/downgrade, reprice may take up to 14 calendar days to implement from the date of official customer request. It excludes any service request that requires site installation/civil work, in that case, Project Implementation Plan to be provided to customer separately with timelines. Upon completion of change request related to BW downgrade and reprice, customer revised billing shall start from the date of implementation of change request by Mobily. Upon completion of change request related to BW Upgrade, Mobily shall notify Customer that Service is ready for testing and Customer's acceptance. Within (2) business days from the aforementioned notification date, Customer shall test the Service and sign the User Acceptance Test (UAT) form. Customer's revised billing for BW upgrade shall start from the UAT sign off date. In case customer does not sign the UAT within (2) business days after Mobily's notification, then Mobily reserves the right to revert the service back to the original BW/price working before the change request without any liability on Mobily.
- 3.5 If customer finds any major faults during BW Upgrade testing Customer shall provide Mobily with a written notice with testing shortfalls in sufficient details within (1) business day from the test date. Mobily shall correct any deficiencies in the Service, and Service testing process set forth above shall be repeated. During this troubleshooting period customer billing shall continue on the old BW and price as usual.
- 3.6 Existing Service relocation to a new location will depend upon Mobily's coverage at the new location. It may result into additional one time or recurring charges for the customer. The service relocation to a new location may take up to one month, in case there is additional work required due to civil work/site installation then actual timeline may vary. The customer service and billing will continue working on the old site until the service is fully relocated to new site. There will be no service relocation allowed for International Connectivity links in the countries outside Kingdom of Saudi Arabia.

### 4. Commencement and Duration

- 4.1 Customer shall commit to receive any Service provided by Mobily hereunder for a minimum period of twelve (12) months from the Service Commencement Date or the minimum commitment period set forth in the Order, whichever is longer (the "Minimum Commitment Period").

4.2 Upon the expiry of the Minimum Commitment Period, for Local Service (Service is defined as "Local Service" if all Customer's Sites are located within the Kingdom of Saudi Arabia (KSA) territories), the Service will be automatically renewed and extended on one (1) month rolling basis based on the same terms and conditions of the Contract until it is terminated in accordance with the Contract provisions. For International Service (Service is defined as "International Service" if any of the Customer's Sites is located outside Kingdom of Saudi Arabia (KSA) territories), the Order shall be renewed on annual basis (each shall be considered as Minimum Commitment Period of twelve (12) months) provided that Customer serves a written notification to Mobily to that effect ninety (90) days before the end of the respective Minimum Commitment Period otherwise the respective Order will expire by the end of the Minimum Commitment Period.

## 5. Confidentiality

5.1 "Confidential Information" is defined as information of any nature in any form including drawings, specifications, data, costs, quotes, graphs, charts, discussions and alike which are communicated verbally or in writing and relates to the purpose of this Contract.

5.2 Both Parties undertake to keep the information confidential and not to use or disclose or communicate any of this information in whole or in part to any third party except Mobily employees, representatives, professionals, advisors, affiliates, agents, subcontractors or as necessary for the implementation of the project or required by Kingdom of Saudi Arabia Law legally or regulatory and both Parties should make needful efforts to prevent the publication or disclosure of any confidential information related to this matters except as provided here-above.

5.3 Confidential Information shall not include information that is:

- 5.3.1 in or becomes part of the public domain other than by disclosure by the recipient in violation of this Contract;
- 5.3.2 demonstrably known to the recipient previously, without a duty of confidentiality;
- 5.3.3 independently developed by the recipient without reference to the Confidential Information;
- 5.3.4 rightfully obtained by the recipient from third parties without a duty of confidentiality; or
- 5.3.5 required to be disclosed by applicable law.

## 6. Mobily Facilities

6.1 "Mobily Facilities" defined as "any property owned, licensed or leased by Mobily or any of its affiliates and used in Customer's Sites to deliver the Service including, terminal and other equipment, conduit, fiber optic cable, wires, lines, ports, routers, switches, wireless receivers and transceivers, data service units, cabinets, racks, private rooms and the alike".

6.2 Unless otherwise agreed, all Mobily Facilities shall remain under the ownership of Mobily. Mobily will provide and maintain Mobily Facilities in good working order.

6.3 Mobily Facilities shall at all times be under the safe custody of the Customer. Customer shall be responsible for maintaining the proper environment (as set forth in the Proposal or as advised by Mobily to Customer from time to time) for Mobily Facilities. Customer shall not, and shall not permit third parties to, rearrange, disconnect, remove or attempt to repair or otherwise tamper with any Mobily Facilities without the prior written consent of Mobily. Except for loss or damage of Mobily Facilities caused by Mobily or Event of Force Majeure, Customer shall always be liable for any loss of or damage to Mobily Facilities during the Contract term. In no event shall Mobily be liable for the damages incurred by Customer due to Service interruption to the extent that such Service interruption was due to Customer's failure to adhere to its obligation under this clause.

6.4 With the termination of services from Mobily, customer has to return the Mobily network devices and elements in good working condition. In case any/all network devices and elements are lost, stolen, damaged or destroyed then customer will pay for the full cost of the device/s.

6.5 Mobily Facilities shall not be used for any purpose other than that for which Mobily provides them.

6.6 In the event Customer fails to adhere to its obligations under this clause and such failure results in losses or damages to Mobily Facilities, Customer shall reimburse Mobily for the actual full cost of replacing any lost, stolen, damaged or destroyed Mobily Facilities.

- 6.7 Customer is committed to allowing Mobily to remove Mobily Facilities from Customer's Sites immediately upon termination, expiration, or cancellation of the Contract or the respective Order or as required by Mobily for the purpose of maintaining or upgrading the Service.
- 6.8 Mobily shall not be responsible for the operation or maintenance of any Customer's hardware or facilities related to the Service. Mobily undertakes no obligations and accepts no liability for the configuration, management, performance or any other issue relating to any Customer hardware or facilities.

## 7. Charges & Taxes

- 7.1 The Order and/or the Proposal include the applicable non-recurring charges (the "NRC") and monthly recurring charges (the "MRC") and any other fees or charges that shall be paid by Customer to Mobily in consideration of the Services provided hereunder (collectively the "Charges").
- 7.2 Service Charges set forth are exclusive of value added taxes (the "VAT") applicable to the Service. Customer shall be solely responsible for paying any VAT currently applied or other taxes applicable to the Service in future; which taxes shall be billed to and charged from the Customer separately in accordance with all applicable regulation in force at the time Services are supplied.

## 8. Billing and Payment

- 8.1 Starting from Service Commencement Date, Customer will receive a bill that includes the due Charges (as set forth in the Proposal) for the period starting from the Service Commencement Date until the 7th of the immediate subsequent month. Thereafter, bills shall be provided on monthly basis pertaining to the Charges due (as set forth in the Proposal) for each subsequent month.
- 8.2 All invoices are due for payment within thirty (30) days from the date of invoice unless otherwise specified in the Order. All payments shall be due and payable in Saudi Riyals (SAR).
- 8.3 If Customer failed to pay the undisputed amounts within the aforementioned thirty (30) days period, without prejudice to Mobily's other rights in contract, tort or law, Mobily shall have the right to suspend the Service without any liabilities towards the Customer for whatsoever damages incurred as a result of such suspension. Mobily shall notify the Customer five (5) days before Service suspension.

## 9. Disputed Invoices

- 9.1 If Customer disputes any portion of a Mobily invoice, Customer must submit written notice of the claim with sufficient detail of the nature of the claim, the amount and invoices in dispute and information necessary to identify the affected Service for the disputed amount within sixty (60) days from the date of the invoice for those Services.
- 9.2 Customer waives his right to dispute any invoice not disputed within sixty (60) days from the date of the invoice.
- 9.3 Non disputed amounts should be paid on time and should not be affected by any dispute.
- 9.4 In the event that the dispute is resolved in favor of Mobily, Customer has to pay the disputed amount immediately or within the period set by Mobily.

## 10. Termination & Suspension

- 10.1 Either Party may terminate this Contract immediately upon giving notice in writing to the other Party in the event of the other Party becomes bankrupt or insolvent; has sought protection from its creditors under any statute or legal process; has suffered or permitted a trustee, liquidator, administrative receiver to be appointed or to take possession of its property or assets; had voluntarily or involuntarily commenced proceedings for dissolution, liquidation or winding up; or has ceased to carry on business.
- 10.2 Mobily may terminate this Contract and any Order, in whole or in part with immediate effect and upon written notice to Customer if: (a) Customer failed to pay his debts or any due undisputed payments within thirty (30) days from the notification date of such failure; (b) Customer failed to rectify a material breach of this Contract within a period of thirty (30) days from the notification date of such failure; or (c) for no cause and without intervention of the courts by giving the Customer not less than (30) days' written notice.
- 10.3 Without prejudice to Mobily's entitlement for Early Termination Charges detailed under clause 10.4 below, Customer may terminate this Contract (or any Order hereunder) for no cause by giving thirty (30) days advance

written notice to Mobily for Local Services. For International Services provided, Customer shall notify Mobily ninety (90) days prior to the termination date. 10.4 If the Contract (or Order) was terminated during the Minimum Commitment Period for Customer's default or convenience, in addition to the Charges payable for the Services delivered by Mobily before termination date, Customer shall be obliged to pay: a) the Charges of the undelivered Service for the rest of the Minimum Commitment following the termination date (as if the Services were fully delivered); and b) any other costs incurred by Mobily as a result of such termination (the "Early Termination Charges").

10.5 In case Customer requested a cancellation of an Order before the Service Commencement Date, then the Customer shall undertake to pay an amount of SAR 10,000 (Ten Thousands Saudi Arabian Riyals) as a penalty for such Order cancellation (not as a compensation for damages incurred by Mobily as a result of such Order cancellation) in addition to any fiber rollout works costs incurred.

10.6 Customer can request temporary suspension of the Service on voluntary basis, only: a) Only for Local Service (no suspension is allowed for International Service), b) after the completion of the Minimum Commitment period, c) Customer has service a written notice to Mobily (60) days prior to the requested suspension date, d) suspension should not last for more than twelve (12) months period, e) suspension should not take place within three (3) months period from the date when the previous suspension had elapsed and f) Customer agreed to pay a recurring fee of ten percent (10%) of the MRC during the requested suspension duration.

10.7 Any temporary service suspension or permanent service termination request, within commitment period or after expiry of commitment period, by customer shall be sent in written to Mobily at 901@mobily.com.sa. It may take Mobily up to 14 days to stop the service and billing after receiving the request. Until the stoppage of the service, customer billing shall continue with the same charges prior to the suspension or termination request.

## 11. Ownership, Intellectual Property Rights and Software License

11.1 All intellectual property rights in any equipment, software or material supplied as part of the Services by Mobily hereunder (including Mobily Facilities) shall remain Mobily's property or the property of its licensors as applicable.

11.2 The Customer shall not disclose nor use any intellectual property rights supplied by Mobily hereunder for any purposes other than those authorized under this Contract or otherwise by Mobily.

11.3 Any IP Address allocated by Mobily to the Customer shall at all times remain Mobily's sole property and the Customer will have a non-transferable license to use such address for the duration of this Contract. If this Contract or any Order is terminated for whatever reason, the Customer's license to use the respective IP Address shall automatically terminate.

## 12. Representations and Warranties

12.1 Either Party warrants and represents that: (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Contract and any Order; (b) it has secured all necessary consents, licenses, and other approvals as may be required to perform its obligations under this Contract and any Service Order (the "Required Rights"); (c) it will maintain the Required Rights and will, at its cost, exercise any renewal right thereunder, and will use reasonable commercial efforts to acquire extensions, additions or replacements as are necessary to cause the Required Rights to continue through the applicable Contract or Order term; and (d) shall at all times recognize, adhere to and comply with all applicable laws and regulations including, without limitation, those of CITC.

12.2 Except as provided in this Contract or any applicable Order, all representations, conditions, warranties or other terms, whether express or implied, by statute or otherwise, including (without limitation) any implied terms as to condition, quality, performance or fitness for purpose of the service, are excluded to the fullest extent permitted by law.

12.3 Mobily does not warrant that the Service is error-free or performing on an uninterrupted basis.

## 13. Liability and Indemnification

13.1 Mobily shall not be liable for any loss of profit, loss of revenue, loss of goodwill, loss of anticipated savings, loss of customers, loss of data, loss or damage of software 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 Contract or any Order.

13.2 Nothing in this Agreement shall be construed as limiting the Customer's liability for:

- 13.2.1 personal injury or death resulting from the negligence of Customer or its employees, agents or subcontractors;
- 13.2.2 fraud or fraudulent misrepresentation;
- 13.2.3 gross negligence or willful misconduct;
- 13.2.4 any liability arising out of Customer's infringement to intellectual property rights;
- 13.2.5 breach of confidentiality undertakings hereunder; or
- 13.2.6 any other matter that cannot be limited or excluded by law.

13.3 Mobily's total liability in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with this Contract under any circumstance shall be limited to: (a) with respect to claims arising in the first twelve (12) months period of the Contract term, 100% of the value of the total payments payable by Customer during the first twelve (12) months period of the Contract term; and (b) with respect to claims arising after the first twelve (12) months period of the Contract term, 100% of the value of the total payments paid by Customer during the twelve (12) months immediately preceding the date on which the claim arose.

13.4 Mobily grants to Customer the right to permit Customer's end users to access and use the Services, provided that Customer shall remain solely responsible for such access and use and shall defend, indemnify and hold harmless Mobily from and against all damages that may result from such access and use.

13.5 The Customer shall indemnify and keep fully indemnified Mobily against all liabilities, losses, damages, expenses and costs (including all legal costs) or other expenses arising out of any claim brought against Mobily or its affiliates, agents, subcontractors or consultants for infringement of a third party's intellectual property rights arising out of, or in connection with, use of the Services by Customer: (a) for purposes not permitted under this Contract; or (b) in breach of applicable laws and regulations (including, without limitation, those of CITC), save to the extent that such claim is caused by or arises from the negligence, or breach of Mobily or its employees, officers, representatives or advisors.

#### 14. Force Majeure

14.1 For the purpose of this clause, the term "Event of Force Majeure" means an event that is: (a) beyond the reasonable control of a Party "Affected Party"; and (b) cannot be remedied or avoided by the Affected Party through its exercise of due care including, but not limited to, war (declared or undeclared), blockade, disturbance, a natural disaster such as lightning, earthquake, storm, flood, explosion or meteor, marine accidents, accidental severing of all or the majority of connecting fibers in a conduit, 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, but excluding any industrial relating to Mobily, Mobily's personnel or any other failure in Mobily's supply chain that are within the reasonable control of Mobily.

14.2 Neither party shall be liable for any failure to perform any of its obligations hereunder where such failure results from an Event of Force Majeure. If any Event of Force Majeure, whether of a temporary or permanent nature, prevents of hinders for a period of fifteen (15) days either Party from complying with its obligations hereunder, (save for the payment obligations of the Customer hereunder), the other Party shall be entitled, without incurring any liability for damages, to terminate the part of the Contract (or the Order) that is affected by such Event of Force Majeure by giving the other Party seven (7) days written notice in advance before termination. Any such termination shall not affect Mobily's right to receive payments for the Service already rendered before the Event of Force Majeure occurred.

#### 15. Governing Law

15.1 This Contract shall be governed and construed in all respects in accordance with the laws of the Kingdom of Saudi Arabia (including, without limitation, those of CITC).

15.2 All disputes arising out of or in connection with the agreement shall be finally decided by the courts of KSA.

## 16. Miscellaneous

- 16.1 Customer shall not assign, charge or otherwise deal with the whole or any part of this Contract or its rights or obligations hereunder without the prior written approval of Mobily. Mobily may assign this Contract or any part thereof to its affiliates without the prior written approval of Customer.
- 16.2 No waiver by either Party of any provision in this Contract 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.
- 16.3 This Contract, and any Order, may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each Party.
- 16.4 This Contract will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Mobily and the Customer. Neither Mobily nor the Customer have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. This Contract does not confer any benefits on any third party unless it expressly states that it does.
- 16.5 All notices under this Contract shall be in compliance with the CITC regulations and in absence of which or as far as it is permitted hereunder. 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 to the addresses and representatives of both Parties identified in the Order.
- 16.6 Customer should maintain updated contacts of his authorized person/s (AP) on Mobily system as Customer invoices, SMS are sent to AP defined contacts, and call center is accepting calls/emails from defined AP only.
- 16.7 Customer shall not request changes in services such as downgrade or relocation before the end of the Minimum Commitment Period and in case Customer needs that, it will be subject to a new proposal from Mobily and it may result in changes in charges to the Customer. In case Customer needs to do any such change (i.e. disconnect, upgrade or downgrade or relocate the Service, Customer's AP needs to send an email to 901@Mobily.com.sa or call 901 from Customer's email or mobile included in Mobily system.

