



Terms and Conditions

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1. Definitions

1.1 In this Contract:

"Mobisoft" means Mobisoft Corporation Ltd;

"Charges" means the charges for each of the Services as set out in Mobisoft's Price List;

"Contract" means the Customer Contract which incorporates these terms and conditions; accepted by placement of a purchase order

"Customer" means a person or an organisation at whose application Mobisoft agrees to provide the Service under this Contract and by whom the charges are accordingly payable;

"GSM" is the digital cellular system known as Global System for Mobile Communications;

"GPRS" is known as General Packet Radio Service, a standard for wireless data communications;

"Supported Device" means one of the mobile devices listed supported by the Service.

"Minimum Period of Service" means at least 12 months from order placement or the time period indicated on the Invoice or corresponding quote (or such longer period as may be agreed in writing between the Customer and Mobisoft) beginning on the date on which Service is actually provided;

"Service" means software as indicated on the Customer Contract form and any such variation of a Mobisoft or vendor application provided now or in the future by Mobisoft and, where appropriate, all or part of these conditions will apply to such additional services.

"Software" means the software provided by Mobisoft.

"Mobisoft Price List" means the list of prices of Mobisoft goods and services in force from time to time that can be inspected at Mobisoft's Main Office.

"Mobile Operator" means the at least one mobile service provider that the Customer has subscribed for GPRS connectivity.

"Mobisoft Main Office" means Mobisoft Corporation, Castle Court, 41 London Road, Reigate, Surrey, UK;

"Reconnection Charge" means Mobisoft's charge in force from time to time for reconnecting service if service has been disconnected for the non-payment of any charges.

1.2 All definitions, notes, terms and conditions which are either set out in Mobisoft's Price List published in accordance with paragraph 5 of this Contract or referred to in any part of this Contract shall be incorporated by reference into this Contract. Copies can be inspected at Mobisoft's Main Office.

2. Provision of Service

Mobisoft shall provide the relevant software and instructions to those Customers contracting for Mobisoft's portfolio of software and related services.

2.2 The Customer accepts that Service may not always be available during periods of suspension (e.g. following notification by Mobisoft or vendor under sub-paragraph 2.7) or whilst Mobisoft arranges maintenance, upgrade or repair. The Customer accepts that proper Mobile Operator GPRS subscription and coverage of the Cellular network is required for proper operations of Service.

The Customer accepts that a Supported Device is required for proper operations of the Service.

General

- 2.4 Service shall comprise of services and facilities, provided by such means, as Mobisoft considers appropriate.
- 2.5 If Service is to be provided by a date specified by the Customer or by Mobisoft, such date shall be treated as an estimate only and Mobisoft shall not be liable for failure to meet such a date.
- 2.6 Service is not fault free and the Customer shall be entitled only to the quality of Service provided by Mobisoft or it's vendors from time to time for its Customers generally.
- 2.7 Mobisoft may interrupt or suspend Service at any time in order to improve, modify or repair the Service but will use all reasonable endeavors to disrupt Service as little as possible and to notify Customers of known pending interruptions.
- 2.8 Service can be impaired by topographical, atmospheric or other conditions or circumstances beyond Mobisoft's control and the Customer will accept any consequent impairment of the quality or availability of Service.

3. Duration of Contract

After the expiry of the Minimum Period of Service as agreed, this Contract will continue until it is terminated in accordance with paragraph 7.

4. General Powers of Mobisoft

- 4.1 Mobisoft reserves the right to give instructions concerning the use of service in the interests of safety, quality of service, other Customers or the Service as a whole and the Customer agrees to comply with such instructions.
- 4.2 Mobisoft shall take such steps, as it considers appropriate to bring the instructions referred to in paragraph 4.1 to the notice of the Customer.

5. Charges for Service

- 5.1 Charges for Service shall be calculated by reference to Mobisoft's Price List that applies at the current time.
- 5.3 The Customer shall pay the following charges where they are applicable to the Service provided by Mobisoft:
- a all connection charges, initial charges and single payment charges;
- 5.4 The Customer must pay all charges and rental within 14 days of receipt of the bill. In the event any charges are not paid by the due date, interest shall accrue on a daily basis at the annual rate of 5% plus the annual base lending rate in force, calculated from the date payment was due until the date of actual payment.
- 5.5 All charges of whatever nature shall be such as Mobisoft shall determine from time to time. Mobisoft may alter any charges in accordance with sub-paragraph 5.6.
- 5.6 When Mobisoft makes a change to the charges Mobisoft will publish details (including the operative date) in Mobisoft's Price List as soon as possible and in any event not less than 14 days before the change is due to take effect.
- 5.7 Unless otherwise stated in Mobisoft's Price List, all charges are exclusive of value added tax, an amount for which, where applicable, will be added to the Customer's bill.
- 5.8 In any proceedings between Mobisoft and the Customer a certificate from Mobisoft that a specified sum is due to Mobisoft from the Customer for Service provided under this Contract, shall, in the absence of manifest error, be conclusive evidence of that fact.
- 5.12 Mobisoft reserves the right to suspend or terminate the service forthwith in the event that the Customer fails to make payment of any monies on any account by the due date, upon termination all outstanding sums for the remaining duration of the contract period become due

6. Responsibilities

Mobisoft and Vendor Service excluding any Mobile network services.

- 6.1 Mobisoft shall protect client information using the same standard of care that it applies to safeguard its own confidential information and that the information shall be stored in such a way as to prevent any unauthorised disclosure thereof. Mobisoft will not disclose or use any information submitted by clients to Mobisoft for any purpose other than that for which the client is using the service for.
- 6.2 Mobisoft customers must comply with all applicable laws, regulations and network operator requirements.
- 6.3 To protect the integrity of the system supplied by Mobisoft, users may not send unlawful, obscene, abusive, harassing or threatening messages. Spamming (unsolicited marketing) is not allowed. Users indemnify Mobisoft against any losses suffered in the event that they don't comply to the above.
- 6.5 The Customer remains liable for any charges incurred as a result of unauthorised use of the Service, until the Service has been suspended by Mobisoft as a result of notification by the user. On receipt of telephone notification, Mobisoft will suspend Service as soon as reasonably practicable.
- 6.6 The Customer shall not use, or permit any other person or organisation to use, the Service;
- a for an unlawful purpose or for sending to any person any message or communication which is offensive or abusive or of an indecent, obscene or menacing character;
- b for the persistent sending of mails without a reasonable cause or sending mails for the purpose of causing annoyance, inconvenience, or needless anxiety to any person; or
- c otherwise than according to instructions given by Mobisoft from time to time in accordance with sub-paragraph 4.1.
- 6.7 If, as a result of use of the Service in contravention of paragraph 6 Mobisoft treats such use as a breach of sub-paragraph 7.1 by the Customer and exercises its rights under paragraph 7 accordingly, Mobisoft may refuse to restore the Service until such assurance as it deems sufficient is received that there will be no further such contravention.
- The Customers must promptly advise Mobisoft, but in any event within 7 days, in writing of any change of address or bank details.
- 6.9 The Customer is responsible for the security and proper use of all User IDs, and passwords and security checkwords which are used in connection with the Service (including changing such User IDs, passwords and security checkwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people.

7. Termination

- 7.1 If the Customer:
- a fails to pay when due any sum payable under this Contract, including any sum required by way of deposit;
- b is the subject of a bankruptcy order or commits an act of bankruptcy or is declared bankrupt or becomes in the opinion of Mobisoft insolvent or makes any composition or arrangement with or assignment for the benefit of creditors or suffers execution, distress or any form of seizure to be levied or effected on or against the Customer's premises, assets or effects or being a Company goes into liquidation whether voluntary or compulsory, or has a receiver or Administrator appointed over any of its assets or has a petition presented a resolution passed for its winding up or for the appointment of a receiver or administrator or anything analogous to any of the same occurs in any jurisdiction; or
- c fails to observe or perform any of the provisions of this Contract or provides inadequate or misleading information to Mobisoft; then, Mobisoft may (without prejudice to any other right or remedy)

- (i) without notice, temporarily suspend Service without prejudice to the liability of the Customer to pay charges for any period of suspension; or
 - (ii) summarily terminate this Contract by written notice to the Customer.
- d. Upon termination by either party all outstanding sums for the duration of the contract period become payable within 14 days
- 7.2 Where this Contract is terminated under sub-paragraph 7.1, the Customer shall pay in addition to other sums payable up to the date of termination, a sum equal to all outstanding sums for the duration of the contract period at the rate in force at the date of termination, whichever is the greater.
- 7.3 Where Service is restored after temporary suspension (except suspension at the Customer's request) under any provision of this Contract, no connection charge shall be payable if the Service is restored without alteration to the means of provision of the Service but the Customer shall pay Mobisoft a re-connection charge provided that Mobisoft may in its absolute discretion remit the charges on restoration of the Service if the Service was temporarily suspended for the reasons stated in subparagraph 7.1 and Mobisoft is satisfied that the sum in question was not received within a reasonable time after demand for payment because of some wrongful act, neglect or default of Mobisoft.
- 7.4 If the Customer fails to comply with any provision of this Contract, liability shall nevertheless continue for all charges due and to become due for the Service provided during any period of such failure.
- 7.5 Any waiver by Mobisoft of a breach by the Customer of any provision of this Contract shall be limited to the particular breach and shall not operate in any way in respect of any future breach by the Customer and no delay on the part of Mobisoft to act upon a breach shall be deemed a waiver of that breach.
- 7.6 After the expiration of the Minimum Period of Service of this contract and the sums upon it shall roll over and continue until officially terminated by the customer. Mobisoft will automatically charge for the next minimum period of 12 months. Delay in payment could result in termination of the service from Mobisoft. Once the service has been provided by Mobisoft no refund will be returned to the customer upon cancellation of the contract or the provision of any Service or facility under, it may be terminated:
- a by Mobisoft by at least 3 months written notice to the Customer and the liability of the Customer to pay for the Service for the full contract shall remain.
 - b subject to sub-paragraphs 7.7, 7.8 and 7.9, by the Customer by at least 3 months written notice to Mobisoft and the Customer's liability to pay for the Service shall remain without prejudice to any accrued liability of the Customer. Upon termination all outstanding sums for the duration of the contract period become due.
- 7.7 If the Customer terminates this Contract during the Minimum Period of Service, the charges for the Minimum Period of Service or the period become payable forthwith.
- 7.8 Termination shall be without prejudice to any accrued liability of the Customer.
- 7.9 This paragraph shall not relieve the Customer from liability to pay accrued charges for any period during which Mobisoft, after giving or receiving notice under sub-paragraph 7.1, continues at the request of the Customer to provide Service.
- 7.10 Mobisoft shall be entitled to levy a reasonable disconnection charge in relation to any disconnection of the service to the Customer.
- 7.11 Any reconnection subsequently made shall be at the sole discretion of Mobisoft.
8. **Limitation of Liability**
- 8.1 For the avoidance of doubt, Mobisoft has no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise beyond that of a duty to exercise reasonable skill and care.
- 8.2 Subject to Clause 8.3 in any event Mobisoft has no liability whatever whether in contract, tort (including negligence or breach of statutory duty) or otherwise for the acts or omissions of other providers of telecommunications services or for faults in or failures of the Service.

- 8.3 Mobisoft does not exclude or restrict liability for death or personal injury resulting from its own negligence or from the breach of its obligation to exercise reasonable skill and care or liability.
- 8.4 Subject to Clause 8.3 in any event Mobisoft's liability in contract, tort (including negligence and breach of statutory duty) or otherwise arising by reason of or in connection with this Contract or howsoever otherwise shall be limited to £1,000,000 for any series of incidents related or unrelated in any period of 12 months.
- 8.5 In any event in no circumstances shall Mobisoft be liable in contract, tort (including negligence and breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, revenue or anticipated savings or for any indirect or consequential loss, wasted expense, financial loss, data being lost or harmed or damage whatever.
- 8.6 Where the Customer does not take the Service in the course of a business (or hold himself out as doing so), this paragraph 8 does not affect the Customer's statutory rights.
- 8.7 Each provision of this paragraph 8 is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is inapplicable or held unreasonable in any circumstances and shall remain in force notwithstanding termination of this Contract.
- 8.8 The Customer shall forthwith on demand indemnify Mobisoft against all claims losses, liabilities, costs and damages that Mobisoft may incur that anyone other than the Customer threatens or makes against Mobisoft because of the way the Service is used or because the Service is faulty or cannot be used arising otherwise than by reason of default on the part of Mobisoft.
9. **Force Majeure**
- Mobisoft is not liable for any breach of this Contract where the breach was caused by Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority, regulatory authority or other competent authority. Mobisoft's compliance with any statutory obligation or an obligation under a statute, international treaties and other international agreements, industrial disputes of any kind (whether or not involving Mobisoft employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom we are not responsible (including in particular other telecommunication service providers and foreign GSM operators) or any other cause whether similar or dissimilar outside our reasonable control.
10. **Variation of Terms and Conditions, Entire Agreement, Assignment**
- 10.1 Mobisoft can from time to time change the Terms and Conditions of this Contract other than the charges payable under it by a document referring expressly to this paragraph and signed by a duly authorised employee of Mobisoft. Mobisoft will publish details of any changes (including the operative date) in its main office as soon as possible and in any event not less than 2 weeks before any change is to take effect, except that if the change is made to a provision of this Contract limiting or excluding Mobisoft's liability for breaches of duty to the Customer (in contract or tort) Mobisoft will give the Customer not less than 2 weeks notice of the change. Subject thereto this contract, these Terms and Conditions and any document referred to herein constitute the entire agreement between us and shall not be varied save by agreement in writing.
- 10.2 You are not allowed to transfer or assign all or any of your rights and obligations under this Agreement to anyone else without our written permission. We may assign or sub-contract our rights and/or duties in whole or in part without your consent.
11. - **Law and Arbitration**
- 11.1 This Agreement shall be governed by English law. The English Courts shall have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement.
12. **General**
- 12.1 These terms and conditions shall apply to the Contract to the exclusion of any other oral or written statement or agreement whatever its legal character.
- 12.2 The Customer shall not, without the written consent of Mobisoft, assign, dispose of or part with the Service. Mobisoft may assign or sub-contract all or any of its rights and obligations hereunder to any third party without the consent of the Customer.
- 12.3 Any consent of Mobisoft referred to in this Contract shall be revocable at the discretion of Mobisoft.

12.4 Any notice to be served on either of the parties by the other under this Contract shall be in writing and delivered by hand or sent by telex or fax or by prepaid ordinary post to the addressee at the following address (or such other address as the addressee shall have for the time being notified to the party giving notice):
Mobisoft Corporation, Castle Court, 41 London Road, Reigate, Surrey, UK
The Customer:
The address stated in the Customer's Contract form as the Customer's address or if the Customer is a limited company, to its registered office.

Ends.