

STANDARD PREPAID SUBSCRIBER TERMS AND CONDITIONS

1. TERMS

- 1.1 Bayede Mobile (Proprietary) Limited (registration number: (2018/452906/07), a private company incorporated in accordance with the laws of the Republic of South Africa with registered address at
- 5 Alexandra Road
Irene
Centurion
Gauteng
0062
- ("Service Provider"); who provides Services to Activated Subscribers through the Network.
- 1.2 These standard prepaid subscriber terms and conditions ("**these Terms**") govern the Subscriber's use of the Services provided by the Service Provider.
- 1.3 The Subscriber accessing the Network and using the Services agrees, by virtue of such access and use, to be bound by the Terms set out herein. If the Subscriber does not wish to be bound by these Terms, the Subscriber may not use the Services.
- 1.4 Only Subscribers over the age of 18 (EIGHTEEN) years can accept and consent to these Terms. If a Bona Fide End User is under the age of 18 (EIGHTEEN), such user must obtain its guardian's consent to be bound by these Terms before accessing the Network and using the Services.
- 1.5 The Service Provider reserves the right, in its sole discretion, to amend and/or replace any of, or the whole of the Terms. Such amendments shall supersede and replace any previous Terms and shall be made available on the Service Provider's Website. Each time a Subscriber accesses the Network or uses the Services, the Subscriber shall be deemed to have consented, by such access to the Network or use of the Services, to these Terms, as amended and/or replaced by the Service Provider from time to time. If the Subscriber is not satisfied with the amended Terms, the Subscriber should refrain from accessing the Network and using the Services.
- 1.6 The Service Provider will however give the Subscriber prior notice where the Service Provider has collected personal information from the Subscriber and the purpose for which the Service Provider collected that information is affected by the intended amendment.
- 1.7 If there is anything in these Terms that the Subscriber does not understand then the Subscriber must contact the Service Provider using the details published on the Website from time to time. Please note that calls to the Service Provider are charged at national rates and may be monitored for training, security and quality assurance purposes.

2. INTERPRETATION

In these Terms, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention –

- 2.1 an expression which denotes –
- 2.1.1 any gender includes the other genders;
- 2.1.2 a natural person includes an artificial or juristic person and vice versa;
- 2.1.3 the singular denotes the plural and vice versa;
- 2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear the corresponding meanings –
- 2.2.1 "**Activation Date**" – the date of the activation of the Subscriber's SIM on the Network;
- 2.2.2 "**Activate**" or "**Activated**" – the activation of a Subscriber's SIM to the Network;
- 2.2.3 "**Affiliate**" – the Service Provider's affiliates, including its holding company and Subsidiaries, and all companies within the holding company's group;
- 2.2.4 "**Airtime**" – the Network Balance used to make Voice Calls over the Network;
- 2.2.5 "**Applicable Law**" – any law applicable in the Republic of South Africa, including statutory law, common law, customary law, any present or future constitution, statute, judgment, decree, treaty, legislation, regulation, directive, ordinance, order, by-law, or other legislative measure, requirement, request or guideline issued by an Authority, as may be amended, replaced, re-enacted, restated or reinterpreted from time to time;
- 2.2.6 "**Bona Fide User**" – an end user of the Network and/or the Services who is a natural person with a genuine intention to utilise the Network and/or the Services on an ongoing basis;
- 2.2.7 "**Business Day**" – any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
- 2.2.8 "**Data**" – the mobile data which is any packet-switching traffic that may be generated using any of the packet bearer services (General Packet Radio Services ("**GPRS**"), Enhanced Data for Global Evolution ("**EDGE**"), Third Generation Wireless Mobile Telecommunications Technology ("**3G**") or Fourth Generation Wireless Mobile Telecommunications Technology ("**4G**"), or any combination of these or future standards and technologies which carry and deliver data;
- 2.2.9 "**Device**" – any mobile device approved by ICASA and used by the Subscriber to access the Network;
- 2.2.10 "**Financial Technology Services**" – the credit transfers, deposits, withdrawals and payments services that may be made available by the Service Provider and its Affiliates or partners from time to time;

2.2.11	" ICASA " – the independent communications authority of South Africa established in terms of the Independent Communications Authority Act 13 of 2000, as amended;		and any other services, products or promotions made available by the Service Provider or the Service Provider's Affiliates or partners on the Network;
2.2.12	" Mobile Number " – the mobile station integrated services digital network (" MSISDN ") number associated with the SIM registered to a specific Subscriber;	2.2.25	" SIM " – the subscriber identity module card issued to the Subscriber bearing the MSISDN number allocated by the Service Provider to the Subscriber, which allows the Subscriber to access the Network and make use of the Services;
2.2.13	" Network " – the electronic communications network in South Africa by means of which the Services are made available to Subscribers;	2.2.26	" SMS " – the short messaging system used to send short messages to other mobile devices over the Network;
2.2.14	" Network Balance " – the Airtime, Data and SMS balance available on the Subscriber's Mobile Number;	2.2.27	" Subscriber " – the Bona Fide End User of the Services;
2.2.15	" Parties " – the parties to these Terms, being the Service Provider and the Subscriber;	2.2.28	" Traffic " – the transmission of signals while using the Services across the Network;
2.2.16	" Personal Information " – all information relating to an identifiable, living, natural person and that can be used on its own or with other information to identify, contact or locate a person or to identify the person in context;	2.2.29	" VAS " – value-added services that may be made available by the Service Provider and the Service Provider's Affiliates or partners from time to time;
2.2.17	" Personnel " – a party's directors, officers, partners, employees, agents, subcontractors, consultants or other representatives;	2.2.30	" VAT " – value added tax as levied in terms of the Value Added Tax Act 89 of 1981 (the " VAT Act "), as amended;
2.2.18	" POPI " – the Protection of Personal Information Act 4 of 2013, as amended;	2.2.31	" Voice Call " – the transmission of circuit-switched or packet-switched voice Traffic by means of the Network;
2.2.19	" Porting " – the transfer of a Mobile Number from the Service Provider to another service provider to another without having to change the Mobile Number;	2.2.32	" Website " – the Service Provider's website from time to time, and for the time being located at www.bayedemobile.co.za ;
2.2.20	" Prepaid " – the means by which a Subscriber may access the Network and use the Services, namely by purchasing credit upfront to be allocated to the Subscriber's Network Balance;	2.3	any reference to an enactment is to that enactment as at the Activation Date and as amended or re-enacted from time to time;
2.2.21	" Processing " – the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form, merging, linking, as well as restriction, degradation, erasure or destruction of information;	2.4	if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party then, notwithstanding that it is contained only in a definition, effect shall be given to such provision as if it were a substantive provision in the body of these Terms;
2.2.22	" Record " – has the meaning ascribed thereto in Section 1 of POPI;	2.5	where any term is defined within a particular clause other than this clause 2, that term shall bear the meaning ascribed to it in that clause wherever it is used in these Terms;
2.2.23	" RICA " – the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002, as amended;	2.6	when any number of days is prescribed in these Terms, they shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding business day;
2.2.24	" Services " – the Network services made available by the Service Provider to the Subscriber, and which may include:	2.7	any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;
2.2.24.1	Data;	2.8	in the event that the day for payment of any amount due in terms of these Terms should fall on a day which is not a Business Day, then the relevant date for payment shall be the following Business Day;
2.2.24.2	placing and receiving Voice Calls;		
2.2.24.3	SMS's;	2.9	where a figure is described in numbers and in words and there is a conflict between the two, the words will prevail;
2.2.24.4	VAS;		
2.2.24.5	Financial Technology Services; and	2.10	the use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording
2.2.24.6	Devices;		

preceding it and the *eiusdem generis rule* shall not be applied in the interpretation of such general wording or specific example; and the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of these Terms, shall not apply.

3. ACTIVATION

3.1 The Service Provider is required, in terms of sections 39 and 40 of RICA, to verify the identity of the Subscriber before providing any Services to the Subscriber.

3.2 The Service Provider undertakes to maintain confidentiality and protection of the Subscriber's Personal Information in accordance with Applicable Law.

3.3 The Subscriber acknowledges that when purchasing a SIM, the Subscriber will not have immediate access to the Network. In order to access the Network and make use of the Services, the Subscriber undertakes to provide the following information:

3.3.1 the Subscriber's full names and identity number, as well as a certified copy of the Subscriber's identification document on which the Subscriber's photo, full names and identity number appear; and

3.3.2 the Subscriber's residential or postal address, as well as a copy of proof of the address provided, which includes a utilities bill, telephone account, a municipal rates and taxes bill not older than 3 (THREE) months, to verify the address provided by the Subscriber; or

3.3.3 if the documents referred to in clause 3.3.2 do not reflect the full details of the Subscriber, an affidavit confirming residence of the Subscriber, deposed to by the person whose full names do appear on the proof of the address.

3.4 Once the Service Provider is satisfied with the information provided by the Subscriber as set out in this clause 3 the Services shall be made available to the Subscriber within 24 (TWENTY-FOUR) to 48 (FORTY-EIGHT) hours.

3.5 The Subscriber undertakes to notify the Service Provider as soon as reasonably possible of any changes to any of the information provided in accordance with this clause 3 and RICA.

3.6 The Subscriber warrants that the information and documentation provided in terms of this clause 3 is true and correct, and the information or documentation has not been falsified in any way or manner.

3.7 The Subscriber acknowledges that the requirements set out in this clause are subject to change at any time due to any changes made to RICA.

4. CHARGES

4.1 The Subscriber shall be liable for the applicable fees, charges, tariffs and rates as published on the Website from time to time.

The Subscriber acknowledges at its chosen plan for the duration of these Terms is a Prepaid plan, and it is recorded that the Services are offered on a Prepaid basis only.

The Subscriber acknowledges that by being on a Prepaid plan, the Subscriber must have a positive Network Balance on its SIM in order to access the Network and make use of the Services.

5. SERVICES

The Service Provider shall use its best endeavours to provide the Subscriber with access to the Network and use of the Services in accordance with the terms set out in these Terms.

Notwithstanding clause 5.1 above, the Service Provider cannot guarantee the quality of the Network. The quality of the Network may be effected by factors that are out of the direct control of the Service Provider, such factors of which may include but are not limited to physical obstructions, poor weather conditions, radio interference, volume of Bona Fide End Users accessing the Network at the same time, and Network Traffic.

The Service Provider does not warrant that:

5.3.1 the Services will be available 24 (TWENTY-FOUR) hours a day; or

5.3.2 the Services will be available 365 (THREE HUNDRED AND SIXTY-FIVE) days a year; or

5.3.3 there will not be any delay on the Network, a loss of signal, or a loss of access to the Network; or

5.3.4 that the Network will be free of errors; or

5.3.5 that the Network will be free of interruption; or

5.3.6 that the Network will be available at all times; or

5.3.7 that the Network is fit for any particular purpose; or

5.3.8 that the Network will be secure and reliable.

The Subscriber hereby indemnifies the Service Provider and holds harmless the Service Provider, its Affiliates and its Personnel, against any loss, costs, damage or expense of any kind suffered or incurred by the Subscriber, arising out of any delay or failure in provision of the Services or access to the Network.

In order for the Subscriber to make use of the SIM in a country outside of the Republic of South Africa, the Subscriber must make a request to the Service Provider on the terms as published on the Website from time to time ("**Roaming Terms and Conditions**"). The Subscriber acknowledges that in doing so, the Subscriber will be subject to the Roaming Terms and Conditions in addition to those set out in these Terms.

The Subscriber is liable, subject to the terms of any applicable product warranties and warranties, for replacement of any lost, damaged, or stolen SIM.

In compliance with section 41 of RICA, the Subscriber undertakes to report, in person, to a police official at any South African police station, a lost, stolen or destroyed SIM immediately upon becoming aware of the loss, theft or destruction. The Subscriber

	acknowledges that this is the Subscriber's obligation in terms of RICA.	7.6	If the Subscriber terminates these Terms any remaining Network Balance shall be forfeited by the Subscriber.
5.8	Once the Subscriber has reported the lost, stolen or destroyed SIM, the Subscriber undertakes to inform the Service Provider by calling 084 135 that the Subscriber's SIM has been lost, stolen or destroyed. Thereafter the Service Provider will blacklist the SIM to block any attempted access by any person who might be in possession of the blacklisted SIM to make use of the SIM at the Subscriber's expense.	8.1	8. SERVICE PROVIDER'S DUTIES
		8.2	The Service Provider warrants all necessary licenses, permits and approvals have been acquired in order to provide the Services and access to the Network.
5.9	If the Subscriber fails to notify the Service Provider as set out in clause 5.8, any use of the SIM to access the Network shall be for the account of the Subscriber.	8.2.1	The Service Provider shall:
		8.2.2	subject to clause 5 above, use all reasonable endeavours to ensure that the Network is available for access by the Subscriber;
		8.2.3	use all reasonable endeavours to ensure that the Services are provided to the Subscriber;
6. PORTING			not do anything or permit anything to be done that may interfere with or have a material adverse effect on the Network;
6.1	Should a Subscriber wish to Port its Mobile Number to a different network the Subscriber undertakes to notify the Service Provider in accordance with the process published on the Website from time to time.	8.2.4	make a customer care centre available to the Subscriber 24 (TWENTY-FOUR) hours a day; and
		8.2.5	use its reasonable endeavours to ensure that the Subscriber has access to the emergency number used to contact emergency services such as the police, the fire service, or an ambulance, which is accessed by a Subscriber telephonically by dialing 112, as may be required by Applicable Law.
6.2	The Subscriber acknowledges that it shall be liable for the costs involved in Porting the Mobile Number.		
7. SUBSCRIBER'S DUTIES			9. SUSPENSION, TERMINATION OR DE-ACTIVATION OF SERVICES BY THE SERVICE PROVIDER
7.1	The Subscriber warrants in favour of the Service Provider that it is a Bona Fide End User.	9.1	The Service Provider shall not be obliged to provide the Services to the Subscriber if the provision of Services is unduly burdensome or unfeasible to the Service Provider.
7.2	The Subscriber shall:		The Subscriber's access to the Network and use of the Services shall be suspended if:
7.2.1	use the Services and access the Network in accordance with the terms set out in these Terms;	9.2.1	the Service Provider has been instructed to do so by any Authority; or
7.2.2	immediately report to the Service Provider any interference with or violation of the Network;	9.2.2	continuing to provide the Services will breach Applicable Law or the licences acquired to provide the Services; or
7.2.3	not transfer its SIM to any other person for use on the Network without prior written consent from the Service Provider;	9.2.3	the Subscriber has failed to make payment of any amount due in terms of these Terms; or
7.2.4	not conduct itself in a manner that may damage or materially interfere in any way whatsoever with the Services or the Network; and	9.2.4	the Subscriber is the cause of abnormally high volumes of usage that may result in the Service Provider having to incur costs associated therewith; or
7.2.5	not re-sell the Services or its SIM to any other person.	9.2.5	there is a breach by the Subscriber of these Terms; or
7.3	In the event that the Subscriber fails to generate any Traffic on its allocated Mobile Number for a period of 120 (ONE HUNDRED AND TWENTY) days (" Inactivity Period ") or more, the Service Provider shall be entitled to suspend the Subscriber's access to the Network.	9.2.6	the Subscriber is using stolen Devices or SIMs to access the Network and make use of the Services or to commit fraud; or
7.4	The Service Provider shall notify the Subscriber, within 2 (TWO) Business Days of expiry of the Inactivity Period, of its right to suspend the Subscriber's access to the Network, and shall give the Subscriber the option to Port the Mobile Number to another mobile network.	9.2.7	the Subscriber is using Devices that have not been approved by ICASA to access the Network; or
		9.2.8	the Subscriber is otherwise illegally accessing the Network or using the Services; or
7.5	Should the Subscriber fail to remedy the inactivity within 30 (THIRTY) Business Days of the Service Provider's notice, the Service Provider shall be entitled to terminate the Subscriber's access.	9.2.9	a Subscriber's Device has been lost, damaged or stolen; or
		9.2.10	the Services are being used by the Subscriber in such a way as to materially adversely affect the Network in such a way that the Network is severely impeded; or

9.2.11	the Service Provider determines that reasonable cause exists for the suspension, de-provisioning or deactivation; or	12.3	Notwithstanding the above, the Subscriber consents to the terms of the Service Provider's privacy policy as published on the Website from time to time.
9.2.12	there is a planned or unplanned outage; or		
9.2.13	there is planned or unplanned maintenance required which prevents the Subscriber from accessing the Network.	13. 13.1	BREACH In the event of the Subscriber committing any breach of these Terms and failing to remedy the breach within 15 (FIFTEEN) Business Days of receipt of notice to that effect then, and in such an event, the Service Provider shall be entitled, at its sole and absolute discretion, to either claim specific performance in terms of these Terms, or cancel the Subscriber's access to the Network, and may claim any such damages as the Service Provider may suffer arising from such breach.
9.3	The Subscriber's access to the Network shall be temporarily suspended if:		
9.3.1	the Network is experiencing a technical failure; or		
9.3.2	the Network is undergoing a modification; or		
9.3.3	the Network is undergoing maintenance.		
9.4	Suspension of the Services by the Service Provider in terms of this clause 9 shall not constitute a waiver by the Service Provider of any other rights or remedies available to the Service Provider in terms of these Terms.	13.2	Without prejudice to any other rights or remedies of the Service Provider in terms of these Terms or in law, the Subscriber shall be liable for and hereby indemnifies the Service Provider against any and all legal costs on the attorney and own client scale incurred by the Service Provider arising out of any breach by the Subscriber.
9.5	In the event that the breach or event that lead to the suspension of the Services in accordance with this clause 9 has been remedied to the Service Provider's satisfaction, the Service Provider shall not be entitled to refuse to connect the Subscriber to the Network, but the Subscriber shall be liable for a reconnection fee as published on the Website from time to time if the suspension or de-activation of the Services was due to the conduct of the Subscriber.	14. 14.1	DISPUTE RESOLUTION Should there be any dispute between the Parties arising from these Terms, the Subscriber may send a complaint to the Service Provider as follows:
10.	INTELLECTUAL PROPERTY RIGHTS	14.1.1	Emailing engage@bayedemobile.co.za ;
	Nothing in these Terms shall constitute a license or a transfer of any of the Service Provider's intellectual property rights, including copyright and trademarks, proprietary to the Service Provider or its Licensees, or relating to the name of the Service Provider, the Service Provider's Affiliates, the Services or the SIM.	14.1.2 14.1.3 14.2	calling the Service Provider's call centre on (084) 1 3734; or dialling 135 from the Subscriber's Device.
11.	NETWORK MAINTENANCE	14.2.1	In the event that the dispute is not resolved to the Subscriber's satisfaction, the Subscriber may refer the matter to:
	The Service Provider shall notify the Subscriber of any planned maintenance to be conducted on the Network. The Subscriber hereby releases and holds harmless the Service Provider, its Affiliates and its Personnel, successors, cessionaries and assigns, from any and all claims, liability, damages, loss, penalty, expense and cost of any nature whatsoever arising from maintenance on the Network, whether planned or unplanned.	14.2.2 14.2.3	the National Consumer Commission at 0860 266 786 or www.nccsa.org.za ; the National Consumer Tribunal at (012) 683 8140 or www.thenct.org.za ; or the Consumer Goods and Services Ombudsman at 0860 000 272.
12.	PRIVACY AND DATA PROTECTION	15. 15.1	DOMICILIUM AND NOTICES The Parties choose as their <i>domicilia citandi et executandi</i> for all purposes under these Terms, whether in respect of court process, notice or other documents or communications of whatsoever nature, the following addresses:
12.1	The Service Provider undertakes that it and its Personnel shall comply with all data protection obligations contained in Applicable Law in respect of the Personal Information of the Subscriber, and specifically when Processing any Personal Information of the Subscriber and entering any such Personal Information into a Record.	15.1.1 15.1.2	The Service Provider: The Service Provider's registered address, and engage@bayedemobile.co.za ; The Subscriber: The Subscriber's Mobile Number as registered on the Network and the residential address furnished by the Subscriber in accordance with the RICA requirements set out in clause 3.3.2.
12.2	The Subscriber consents to the Service Provider storing, Processing and using the Personal Information in accordance with Applicable Law.	15.2	Any notice or communication required or permitted to be given in terms of these Terms shall be valid and effective only if in writing, but it shall be competent to give notice by email to the Service Provider and by SMS to the Subscriber.

- 15.3 Either Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi* to another physical address, provided that the change shall become effective on the 4th (FOURTH) Business Day from the deemed receipt of the notice by the other Party.
- 15.4 Any notice to a Party:
- 15.4.1 sent by prepaid registered post in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 4th (FOURTH) Business Day after posting (unless the contrary is proved);
- 15.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
- 15.4.3 sent by email or SMS to its chosen email address, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 16. GENERAL**
- 16.1 The Service Provider shall be entitled to terminate the Services at any time on the instruction of any Authority. Termination by the Service Provider in accordance with this clause 16 shall not constitute a breach of these Terms and the Subscriber shall not have a claim against the Service Provider for any damage or loss caused by such termination by the Service Provider.
- 16.2 The Subscriber shall not be entitled to cede or assign any of its rights or delegate any of its obligations under these Terms without the written consent of the Service Provider.
- 16.3 The Service Provider shall be entitled to cede or assign any of its rights or delegate any of its obligations under these Terms, on notice to the Subscriber.
- 16.4 Save as expressly provided for herein, each paragraph, clause, term and provision of these Terms and any portion thereof shall be considered severable, and if for any reason any part of these Terms is held to be invalid or unenforceable, same shall not impair the validity and operation of the remainder of these Terms, which shall continue to be given full force and effect and be binding upon the Parties.
- 16.5 These Terms shall not prevent the Service Provider from entering into similar agreements with third parties.
- 16.6 These Terms constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 16.7 No addition to, variation of, or agreed cancellation of, these Terms shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.8 No relaxation, indulgence or extension of time, which any Party may grant to any other, shall constitute a waiver of the rights of that Party or preclude that Party from exercising any existing or future rights.
- 16.9 Without prejudice to any other provision of these Terms, any successor-in-title of either Party shall be bound by these Terms.
- 16.10 These Terms shall be interpreted and governed by the laws of the Republic of South Africa.
- 16.11 These Terms may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.