



STANDARD TERMS AND CONDITIONS OF VALUE ADDED PRODUCT SUPPLY BY BLUE LABEL DISTRIBUTION (PTY) LTD (2004/003066/07) ("the Company") TO YOU ("Distributor")

1 DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1. Unless the context clearly indicates a contrary intention, the following words and phrases shall be ascribed the meanings which appear opposite them:
 - 1.1.1. "Affiliate" means, in relation to a Party, any company or legal entity that directly or indirectly controls, or is controlled by, or is under common control with that party (in this regard, "control", and each variation of that term, means direct or indirect beneficial ownership of at least fifty percent (50%) of the voting stock interest in a company or entity, or such other relationship as, in fact, constitutes actual control) including such a Party's Subsidiaries; For the purpose of this Agreement the term "Subsidiaries" shall have the meaning ascribed thereto in *Companies Act*, No. 71 of 2008, as amended from time to time;
 - 1.1.2. "Airtime" means the means by which a Customer accesses the services of a Network Operator over its network, whether generated by a Pin ("Pinned") or not/virtually ("Pin-less") or otherwise;
 - 1.1.3. "Agreement" means the Agreement set out in this document, together with all Annexures thereto and any other documents incorporated by reference recording any agreements between the Parties from time to time in terms of this Agreement;
 - 1.1.4. "Applicable Law" means all law applicable in the Territory, and includes any present or future constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty, directive, rule, guidance or code and/or practice note issued by any relevant Authority;
 - 1.1.5. "Authority" means any national, municipal, provincial, other local or administrative government authority or department, or any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction by Applicable Law over the assets, resources, activities or operations of any of the Parties (or the Products and/or services) in any territory that is applicable to this Agreement;
 - 1.1.6. "Bill Issuer" means a third-party supplier of goods, services and/or products to a Customer which contractually entitles it to receive certain payments from the Customer in return for such goods, services and/or products as may be more fully set out in an Annexure hereto;
 - 1.1.7. "Business Day" means a day which is not a Saturday, Sunday or public holiday in the Territory;
 - 1.1.8. "Customer" means the end user customer / client who purchases the Products from Distributor;
 - 1.1.9. "Face Value" means in relation to a Voucher, the recommended retail price or rand denomination thereof;
 - 1.1.10. "Gaming Provider" means a duly licensed third-party supplier of gaming/gambling/betting goods and services as may be more fully set out in an Annexure hereto;
 - 1.1.11. "Losses" means any and all losses, liabilities, damages and claims and related costs and expenses including, but not limited to any and all penalties imposed by any Authority, legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation and interest;
 - 1.1.12. "Network Operator(s)" means Vodacom, MTN, Cell C, Telkom, and any other third-party entity that may provide telephony, voice, data and other services over a telecommunications network;
 - 1.1.13. "Parties" means the Company and the Distributor;
 - 1.1.14. "Party" means any one of the Parties as the context may indicate;
 - 1.1.15. "Pin" means a series of numbers and/or characters which will allow a Customer access to a predetermined amount of Prepaid Products offered by the Supplier concerned;
 - 1.1.16. "Product" or and "Prepaid Product" means Airtime and/or any other goods and/or service of a Supplier made available by Company from time to time or other goods and/or services (such as, but not limited to bill payments, ticketing services, transport and/or gaming services) which Company makes available hereunder to the Distributor for distribution to its Customers as more fully set out in Annexure A hereto;
 - 1.1.17. "Utility Provider" means a third-party supplier of any utilities or services, such as electricity, water, television viewing or the like, from time to time made available by Company as may be specified in an Annexure hereto;
 - 1.1.18. "Voucher" means the mechanism that the Company employs to deliver a Product and enable the purchaser thereof to access the goods and services of the Supplier. This may be in the form of a Pin (including "UniPin" for off-line electricity) which is conveyed electronically or printed on paper, which when entered on





the Supplier's system, allows the Customer concerned access to Prepaid Products, or a Pin-less or virtual mechanism of simply crediting the Customer with access to a prescribed quantity or value of Products or otherwise;

- 1.2. In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3. References to "persons" are to individuals, bodies corporate, firms, other unincorporated associations and governmental or supra-national authorities.
- 1.4. References to "the/this Agreement" are to this agreement and all Annexures hereto together with any other documents which are expressly therein indicated as forming part of the Agreement between the Parties.
- 1.5. References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, ordinance, regulations, instruments or other subordinate legislation made under the relevant statute.
- 1.6. References to "Days" are references to normal calendar days unless specifically stipulated as being Business Days.
- 1.7. When any number of days is prescribed in this Agreement, same shall be reckoned 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 Business Day.
- 1.8. In this Agreement, the words "include", "includes", "including" and any derivations of them shall be construed to include the words "but not limited to" after them.
- 1.9. Any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors in title or permitted assigns.
- 1.10. If any provision in a definition is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.
- 1.11. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.12. Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same.
- 1.13. The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the agreement shall not apply.
- 1.14. This Agreement shall be governed by, interpreted and construed in accordance with Applicable Law.
- 1.15. Terms other than those defined within the Agreement will be given their plain English meaning and those terms, acronyms and phrases known in general commercial or industry-specific practice will be interpreted in accordance with their generally accepted meanings. Technical terms that are used in this Agreement, but that are not defined shall have the meaning determined first by reference to the Information Technology Infrastructure Library ("ITIL"), and if not defined in ITIL, have the generally understood meanings in the information technology or retail or financial services or banking industry.
- 1.16. The headings in this Agreement have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.
- 1.17. A "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the *Electronic Communications and Transactions Act*, 25 of 2002 and "signed" shall mean a signature executed by hand with a pen without any electronic process or intervention, alternatively it shall mean a signature executed by way of secure electronic signature such as DocuSign.
- 1.18. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2 RECORDAL AND APPOINTMENT

- 2.1. Distributor, through its point of sale ("POS") and/or kiosk / retail environment, wishes to provide Customers with the Products through an integrated solution the Company and the Distributor.





- 2.2. Distributor hereby appoints Company to supply it the Products on an exclusive basis within the Territory of South Africa, which appointment Company accepts on such terms as set out in this Agreement.
- 2.3. The Parties hereby agree that Company will make available to the Distributor the Products on such terms as set out in this Agreement, which Products will be purchased by Customers from the Distributor.
- 2.4. Company hereby appoints Distributor to distribute, market and promote the Products to Customers, and Distributor hereby accepts such appointment and undertakes to procure its best reasonable endeavours to maximise the sale of Products to Customers on such terms as set out in this Agreement.
- 2.5. The relationship between the Parties shall be that of independent contractors and nothing in this Agreement shall be interpreted as constituting a partnership or an agency relationship between the Parties.
- 2.6. Neither Party shall have any authority to bind the other in any way whatsoever.

3 SUPPLY OF PRODUCT

- 3.1. Distributor shall purchase Products from time to time made available by the Company at the price and upon the terms from time to time offered by the Company and otherwise contained in this Agreement. Distributor will pre-fund the Company for Product purchases unless specific credit arrangements are made.
- 3.2. Delivery of Products shall be deemed to have been made when the Company and/or its Customers have the ability to access the Product. Risk shall pass on delivery. Should Company for whatsoever reason not be able to supply Product, it shall not incur any liability as a result of such inability and/or late delivery.
- 3.3. All amounts due to Company in respect of Products purchased by the Distributor shall be payable by the Distributor to the Company without deduction, set-off or demand and shall, unless expressly stated to the contrary, be stated exclusive of any value added tax or levy, which shall be payable in addition.
- 3.4. The Distributor shall at all times comply with Applicable Laws.

4 ARBITRATION AND DISPUTE RESOLUTION

- 4.1. Any dispute or disagreement shall be submitted to and determined by arbitration in accordance with the AFSA rules ("the Rules"). Such arbitration shall be held in Sandton, Gauteng, South Africa unless otherwise agreed and shall be held in a summary manner with a view to its being completed as soon as possible.
- 4.2. There shall be one arbitrator, who shall be, if the question in issue is:
 - 4.2.1. primarily an accounting matter, an independent chartered accountant of not less than 10 (ten) years standing; and
 - 4.2.2. primarily a legal matter, a practising Senior Counsel or commercial attorney of not less than 10 (ten) years standing; and
 - 4.2.3. any other matter, a suitably qualified person.
- 4.3. The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them with a period of 7 (seven) days after the arbitration has been demanded by either of the Parties by notice in writing to the other, either of the Parties shall be entitled to request the Chairman for the time being of AFSA to make the appointment who, in making the appointment, shall have regard to the nature of the dispute, and shall have regard to the parties' requirement of speedy arbitration.
- 4.4. The arbitrator shall have the powers conferred upon an arbitrator under the Rules. The decision resulting from such arbitration shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Proceedings are to be held in camera and are confidential. The provisions of this clause shall not preclude any other Party from access to an appropriate court of law for:
 - 4.4.1. interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration or expert determination, as the case may be;
 - 4.4.2. any other form of relief on the basis of facts which are not disputed, provided that if a bona fide dispute arises in the courts of the proceeding they shall be stayed pending an arbitration or on the dispute in terms hereof; or
 - 4.4.3. an order for the payment of a liquidated amount of money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.
- 4.5. The provisions of this clause 4 and any other clause that is by its nature reasonably intended to survive termination, shall survive the invalidity and/or termination from whatever cause arising of any or all the terms of this Agreement and shall not preclude any Party from seeking interim relief in a court of competent jurisdiction.

5 LIMITATION OF LIABILITY





Insofar as permitted by Applicable Law Distributor further indemnifies and holds harmless Company from any and all claims or loss of the Distributor and third party claims against the Company and any other Losses or damage suffered by the Company.

6 WARRANTIES

Unless a warranty is expressly provided elsewhere in this Agreement the Company does not give any warranty or represent that any Product will be fit for any purpose, free of defects or do anything that Distributor or the Customer may expect and Company shall not be liable to Distributor or any Customer or any other third party in terms hereof. Distributor shall ensure that the Customers agree that they have no recourse for defects as aforesaid.

7 DATA PROTECTION

The following terms shall have the following meanings ascribed to them:

"Data Subject" shall have the meaning ascribed to it in Chapter 1 of POPI;

"Personal Information" shall have the meaning ascribed to it in Chapter 1 of POPI;

"POPI" means the *Protection of Personal Information Act*, No 4 of 2013, as amended from time to time, including any regulations and/or code of conduct made under the Act;

"Privacy and Data Protection Conditions" shall mean the 8 (eight) statutory prescribed conditions for the lawful Processing of Personal Information which is entered into a Record and such conditions are listed in Section 4(1) of POPI and are dealt with in detail in Part A of Chapter 3 of POPI;

"Processing" shall have the meaning ascribed to it in Chapter 1 of POPI;

"Record" shall have the meaning ascribed to it in Chapter 1 of POPI;

"Responsible Party" shall have the meaning ascribed to it in Chapter 1 of POPI;

7.1 The Parties to the Agreement shall fully comply with the statutory obligations contained in POPI, with which the Parties warrant that they are fully conversant with at Signature Date, when Processing Personal Information obtained by the Responsible Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid the Responsible Party shall ensure that the Privacy and Data Protection Conditions are strictly adhered to when Processing the Data Subject's Personal Information.

7.2 The Distributor hereby indemnifies and holds the Company harmless from any and all liability and/or Losses whatsoever which the Company may incur arising from the Distributor's failure to comply with its statutory obligations contained in POPI.

8 AUDIT

8.1 The Distributor shall (and shall ensure that each of its Affiliates, Personnel and Customers shall) provide to the Company access at all reasonable times, during the term of this Agreement and for up to six (6) months following expiration or termination of this Agreement, to: (a) any facility or part of a facility at which the Distributor or any Distributor Personnel is distributing the Products and/or services; (b) data, books, records, information systems relating to the Products and/or services; and/or (c) Distributor Personnel, in each case relevant to the Products and/or services and for the purpose of:

- (a) performing audits designed to confirm that the Distributor is meeting all applicable information privacy and security requirements and all requirements under any Applicable Law, and is in compliance with the applicable Product;
- (b) examining the Distributor's compliance with applicable Company policies, procedures and requirements as may be provided by the Company to the Distributor from time to time, including those relating to the prevention and detection of fraud or in respect of the inappropriate use or access of software, hardware, systems and networks;
- (c) identifying suspected fraud or material accounting mistakes, in which case the Company and any auditors of the Company or its authorised agents may discuss any matter relating to the Products and/or services with any Distributor Personnel as the Company may reasonably require;
- (d) fulfilling any request by any Authority in the course of carrying out its regulatory functions;
- (e) conducting the Company's internal and statutory audits including preparing the Company's annual and interim reports and any other reports required by any internal auditor or external auditor or Authority; and
- (f) inspecting any relevant Company assets in the Distributor's possession or control (including without limitation any Intellectual Property Rights, Company data or Confidential Information).

8.2 The Distributor shall make available promptly to the Company and/or the Supplier the findings of any review or audit conducted by the Distributor, its Affiliates, any subcontractor or their Personnel (including internal and





external auditors), to the extent such findings relate to the performance by the Distributor of its obligations under this Agreement or reflect conditions and events which have a material impact on the Products and/or services.

- 8.3 The Distributor shall provide all assistance reasonably requested by the Company in relation to any such audit, including by ensuring that all Distributor Personnel co-operate with such an audit. The Distributor's obligation to provide access for any particular audit is conditional on the Distributor receiving at least ten (10) days advance notice of such audit; provided, however, that the Distributor shall provide access for any of the following even if no advance notice was provided: any audit or investigation: (i) by any Authority or law enforcement agent(s); (ii) arising out of reasonable suspicion of misappropriation, fraud or business irregularities of a potentially criminal nature; or (iii) relating to any the Company's and/or the Company Affiliate's data protection or information security requirements.

9 GENERAL

- 9.1 No waiver by the Company or failure to exercise any right provided for herein shall be deemed to be a waiver of any further right hereunder.
- 9.1. This Agreement constitutes the entire agreement between the Parties on the subject matter of this Agreement and supersedes all and any prior oral or written undertakings, agreements and understandings between the Parties.
- 9.2. If any of the terms of this Agreement shall become invalid or unenforceable and provided that such invalid or unenforceable terms or provisions shall not nullify the underlying intent of this Agreement, such terms and conditions shall be severable and be deemed to be deleted from the other terms or provisions of this Agreement which shall remain in full force and effect. Notwithstanding the foregoing the Parties shall thereupon negotiate in good faith and agree on a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

Additional Product Terms:

- Each Voucher and/or Pin and/or Unipin issued by the Company to the Distributor in terms of the Agreement will be valid and redeemable for a period of 24 (twenty four) months from the date upon which it is issued by the Distributor to a Customer, after which date, it may be cancelled by the Company and all rights therein shall revert to the Company insofar as permitted by Applicable Law.
- Notwithstanding the above point, where a Customer wishes to activate a Voucher and/or Pin and/or Unipin after the 24 (twenty four) month period referred to the above point, but before the expiry of 36 (thirty six) months from the date upon which the Voucher and/or Pin and/or Unipin in question is issued by the Distributor to the Customer, then the Distributor may requisition from the Company the re-issue of the Voucher and/or Pin and/or Unipin in question, in which case the Company will re-issue the Voucher and/or Pin and/or Unipin, or issue a new Voucher and/or Pin and/or Unipin, in either case, so that it remains redeemable for a period which expires upon the expiry of 36 (thirty six) months from the date upon which the Voucher and/or Pin and/or Unipin in question was initially issued by the Distributor to the Customer. Ownership in and to the Voucher passes upon redemption thereof.
- As and when new Product listings in prepaid airtime or data become available from the mobile Network Operators, we require that these Product listings be catered for on your respective Point of Sale System (POS) system and so making these new listings timeously available for sale and consumer support thereof.

