



BCX STANDARD TERMS AND CONDITIONS FOR CONSUMERS AS DEFINED BY THE CPA

I. FOREWORD

The Applicant must take note of the details set out under this Foreword.

If you cannot understand these general provisions, which are preconditions to the standard BCXBCX terms and conditions for the provision of BCX Services, Solutions and Products, please contact BCXBCX. Please note that the BCX standard terms and conditions are attached for you to read and consider.

They will become binding and apply to you once BCXBCX has agreed to provide you with the BCX service, which you have requested under the Application for Services form.

II. EXCLUSION OR LIMITATION OF LIABILITY CLAUSES (In terms of section 49 of the Consumer Protection Act, 2008 ('the CPA'))

BCX has included certain clauses, which contain certain limitations under its Standard Terms and Conditions and Service Agreements. These clauses are highlighted in bold or capital letters and include:

- a) **Cancellation or variation of the BCX Services or SE ('Service Equipment') before the Commencement date-** if you cancel or vary any of the BCX Services, and / or the SE, which cancellation is not as a result of any breach on the part of BCX, before the Commencement date, in whole or in part, BCX will have the right to charge you all Abortive Costs which BCX has incurred as a result of the cancellation or variation.



Termination of a Fixed Term Agreement by an Individual Consumer for no cause – if you as a Consumer, conclude a Fixed Term Agreement with BCX, you will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, on 20 (Twenty) Business days written notice, which termination will be subject to payment of a reasonable cancellation fee, determined using the guidelines set out under section 14 and Regulation 5(2) of the CPA. Termination initiated before the 15th of a trading month will be considered as a current month termination. Terminations received after the 15th of the trading month will be considered as the following month. **This right applies to ‘natural persons’ only and does not apply to Consumers who apply for service as a ‘juristic person’.**

- b) **Migration-** Any request by you to migrate to other BCX services, will be subject to certain conditions, including the payment of any additional Migration charges, levied by BCX, which charges are detailed under the Tariff List or as advised by BCX and the signing of a new Agreement. Charges will only be applicable on downgrade of services.
- c) **Charges and payment -** BCX will levy certain charges in respect of the use by you of the BCX Services and the SE. BCX also has the right to ask for a deposit and set credit limits and levy interest on unpaid charges.
- d) **Incorrect use of SE or use of illegal equipment -** BCX reserves the right to disconnect from the Network and / or suspend or terminate the BCX Service, where any unlicensed or illegal SE is used in connection with the BCX Services. In such case you will indemnify BCX against any liability, loss or damage which you or BCX may incur as a result of the unlawful or incorrect usage of such SE.

The Applicant must carefully consider the BCX standard terms and conditions applicable to the BCX Services and SE as they do contain certain terms, which purport to limit the risk or liability of BCX and other third parties acting on behalf of BCX.

APPLICATION OF STANDARD TERMS AND CONDITIONS



These standard terms and conditions, as amended by BCX from time to time in accordance with the provisions of BCX's Electronic Communications Service (ECS) license, the Electronic Communications Act 36 of 2005, the Consumer Protection Act, 68 of 2008 or any other applicable legislation, are applicable to the provision and use of all electronic communications services and products provided by BCX to Consumers.

The Consumer accepts and agrees that these terms and conditions become binding on it once BCX has processed the Consumer's Application for Services form and agreed to provide the Consumer with the BCX Services and the SE. BCX will notify the Consumer of its acceptance or non-acceptance and where applicable, the deposit which it may require in order to secure the BCX Services and SE.

III. APPLICATION FOR BCX SERVICES AND CONDITIONS APPLICABLE TO SUCH APPLICATION

Persons wishing to obtain a BCX Service and where applicable, the SE, must apply for the BCX Service and SE by signing the standard BCX Application for Services Form, which can be either downloaded from the BCX Website or obtained on request from BCX's Sales team; or by following any other application procedure determined by BCX from time to time.

If:

- a. the Applicant is unable to either afford the service applied for, or is in arrears on existing or closed BCX accounts, or
- b. the Applicant has not paid a deposit where required;
- c. the Applicant has been blacklisted or has an adverse credit rating as per the National Credit Act;
- d. the Applicant is under some form of legal disability, for example is under the age of 18, is insolvent or has been sequestrated or has been diagnosed as mentally unfit,



- e. the Applicant has not provided the required or correct information,
- f. BCX is unable to provide the required services due to unavailability of infrastructure or infrastructure limitations,
- g. there is an unavailability of coverage in a specific area,

then BCX has the right to decline and / or reject the Application for Services and the offer to contract, provided that such rejection is not discriminatory as per Section 9 of the Constitution.

IV. AMENDMENT OF TERMS AND CONDITIONS

BCX reserves the right to amend its standard terms and conditions from time to time, subject to the provisions of the Consumer Protection Act, 68 of 2008, in so far as these amendments may relate to a Consumer, as defined.

BCX will place the amended terms and conditions on the BCX website www.BCX.co.za and such amended terms and conditions will thereafter be deemed to be incorporated into the Agreement.

V. CREDIT REFERENCING

The Applicant and Consumer gives BCX express permission to carry out general and specific credit reference enquiries about the Applicant who has applied for BCX Services or SE. In addition, the Applicant and Consumer expressly gives BCX permission to check the correctness of any of the information supplied by the Applicant and/or Consumer when applying for a service.

VI. WARRANTY BY CONSUMER



The Consumer warrants and represents that all information supplied by it in applying for the BCX service and the SE, is true, correct and complete and indemnifies and holds harmless BCX against all claims, of whatever nature, that arise, directly or indirectly, as a result of any incorrect information being supplied by it.

BCX will use the Applicant's/Consumer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act, being Regulation 1740 headed: Code of Conduct for electronic communications and electronic communications network services licences^[1]_{SEP} (Government Gazette No. 30553) and in particular Regulation 3.8.

VII. ADDITIONAL COPIES

Additional copies of the BCX standard terms and conditions can be obtained on request from BCX's Consumer service call centre or downloaded from the BCX website at www.BCX.co.za.

VIII. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

Although BCX respects you, the Consumer's, privacy and to this end your right not to have your personal data misused or distributed to other persons, you, the Consumer have to comply with the provisions of the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA), which is a law which requires that bodies such as BCX verify your details before they are able to provide you with a communication service.

This clause sets out BCX's undertaking to protect and respect your personal data and not to misuse it. It also sets out your undertaking to comply with RICA.

a) BCX at any time reserves the right to make general credit reference enquiries about the Consumer and to check the correctness of the information that has been supplied. BCX



shall also be entitled to furnish any information relating to the Consumer's account and compliance with these conditions to any registered credit bureau.

b) BCX will use the Consumer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to process and use the Consumer's personal data only for the purpose for which it has been collected and undertakes that this processing will be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time.

c) The Consumer accepts that RICA applies to the BCX Services and SE, which the Consumer has requested BCX to provide it with under this Agreement, and agrees that it must, where applicable, comply with the relevant requirements of RICA, including, without generalising:

(i) to provide BCX with all required Personal Data and other details which BCX is required to obtain from the Consumer, in terms of *section 39* of RICA;

(ii) not to transfer the BCX service or SE to another person without providing BCX with the Personal Data and other details of the person who is taking over the BCX service or SE. Any such transfer will not be deemed to be legally complete until the transferee has completed and BCX has accepted a transfer of ownership form. Until such time, the Consumer accepts liability for all correctly invoiced service related charges.

d) The Consumer acknowledges and accepts that where it does not comply with these provisions that this will amount to a material breach of this agreement by the Consumer which will allow BCX to cancel the agreement and claim damages as a result of the cancellation.

e) The Consumer also acknowledges and accepts that where it does not comply with the provisions set out under VIII(d) above, that this will be a breach of RICA and this will give



rise to a possible criminal charge and sanction being imposed against the Consumer as per the requirements of RICA.

IX. INSTALLATION, ACTIVATION AND PROVISIONING OF THE SERVICE

This clause confirms that you, the Consumer, have asked BCX to provide you with certain electronic communication services and SE, which you selected when you completed the Application Form or agreement. BCX has agreed to provide you with the selected services and SE, but these will be provided on condition that you will comply with the terms and conditions set out under the Agreement.

- a) The Consumer accepts and agrees that the terms and conditions set out under the Agreement will become binding on it once BCX has processed the Application Form and agreed to provide the Consumer with the BCX Services and the SE.
- b) BCX reserves the right to amend these terms and conditions from time to time. BCX will give written notice to each Consumer of such amendments and will place the amended terms and conditions on the BCX website www.BCX.co.za which amendment will be deemed to be incorporated into the Agreement and bind the Consumer from the date that the amendment has been placed on the website.
- c) Where, as a result of any amendment anticipated under paragraph (b) above, a Consumer is of the view that such amendment is to its detriment; the Consumer may terminate the Agreement without penalty provided that it gives BCX 20 (twenty) Business days' notice in writing of its election to terminate the Agreement.

Where an individual Consumer (not a juristic person) properly terminates the Agreement as per his rights under the CPA, such termination will be without penalty, save where the SE has already been delivered to the Consumer. In such a case the Consumer will have a legal duty to keep the SE in original condition until collected by BCX.



- d) Subject to the terms and conditions of this Agreement, BCX shall use all reasonable endeavours to activate and commence with the Service on the date specified in the Installation Acceptance document or such other date as may be agreed by the Parties and thereafter to provide and maintain the Service throughout the duration of this Agreement.
- e) Installation of the Service(s) shall be effected by BCX or a person duly authorised by BCX.
- x. BCX takes no responsibility for the quality of the BCX service due to circumstances which are outside its control.
- xi. BCX hereby expressly advises the Consumer that it does not operate in isolation, but instead relies on functionalities, equipment and infrastructure which are provided by a number of service providers who provide separate, but interrelated and connected services which as a whole allow the network and the SE to function. These service providers operate as independent bodies who are not necessarily contracted by BCX and the Consumer accepts and acknowledges that fact.
- xii. Whilst BCX will use its best endeavours to ensure that the BCX Service and SE are operational at all times, it does not warrant that the service will be available on a 24 (Twenty Four) Hour, 365 (Three Hundred and Sixty Five) day basis, this is due to the nature of the telecommunications industry and the network, which is dependent on a number of independent service providers over which BCX has no control.
- xiii. BCX in addition expressly advises and the Consumer acknowledges and accepts that the SE are not manufactured by BCX but are manufactured by third parties. In most cases, due to the provisions of the Act read together with the Authority Code of Practice and guidelines, BCX will not be in a position to extensively test or operate the SE before they are handed to the Consumer in order to ensure that they are fit for purpose and / or are intact.
- xiv. In the light of the disclosures housed under Paragraph XI above, BCX expressly stipulates and the Consumer acknowledges that BCX cannot warrant or guarantee that the BCX Services and the SE will:

- a) at all times, be free of errors or interruptions;
- b) always be available;
- c) be fit for any purpose;
- d) not infringe on any third-party rights;
- e) be secure and reliable,

save where the Services and SE are found to be defective and such defect has been solely caused by BCX as anticipated under sections 55 and 56 of the CPA, where applicable.

1. INTERPRETATION

1.1 In these terms and conditions:

1.1.1 the headings have been inserted for convenience only and should not be taken into account in its interpretation.

1.1.2 unless the context indicates a contrary intention an expression which denotes:

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and vice versa;

1.1.2.3 the singular includes the plural and vice versa.

1.2 In this Agreement the following expressions bear the meanings assigned to them hereunder:

1.2.1 **“Act”** means the Electronic Communications Act 36 of 2005, as amended from time to time, and any regulations, as may be amended or replaced from time to time, which Act, amongst other things, regulates the telecommunications industry and related sectors and the provision by them of certain electronic communications network services and electronic communication services. The Act and related content can be viewed on the ICASA Website at <http://www.icasa.org.za/>”

- 1.2.2 **Agreement** means the service contract form (including any order) and this standard terms and conditions. In case of conflict, this standard terms and conditions shall prevail, however in the instance of a service provided as a customer specific solution the terms and conditions of that service Agreement shall prevail as far as BCX and the customer agreed in writing to such deviation;
- 1.2.3 **Activation** means the enabling of the BCX Product and/or Service as requested by the Customer to operate on the BCX network in terms of this Agreement;
- 1.2.4 **Business Day** means a day, which is not a Saturday or a Sunday, or a public holiday in the Republic of South Africa;
- 1.2.5 **Business Hours** means all the hours that fall between 08h00 and 17h00 on any Business Day;
- 1.2.6 **Call Centre** means a facility established to provide telephone support to Customers by BCX which will enable Customers to report faults and make general enquiries;
- 1.2.7 **“Confidential Information”** means any information or data which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party, or which is provided or disclosed in confidence by the Disclosing Party or any person acting on its behalf or which may come to the knowledge of the Receiving Party by whatsoever means and shall include the content of this Agreement. Confidential information shall include:
- 1.2.7.1 Intellectual Property Rights that are proprietary to the Disclosing Party or that is proprietary to a third party and in respect of which the Disclosing Party has rights of use or possession;
 - 1.2.7.2 the Disclosing Party's plans, designs, drawings, functional and technical requirements and specifications;

- 1.2.7.3 the names of clients, service providers and suppliers of the disclosing Party; and
- 1.2.7.4 other matters which relate to the business of the Disclosing Party and their respective suppliers, service providers and clients, in respect of which information is not readily available in the ordinary course of business to a competitor of the Disclosing Party;
- 1.2.8 **Consumer** means a Customer who enjoys the protection afforded by the CPA, and includes natural persons and juristic persons whose asset value or annual turnover falls below the threshold (currently R2 Million) which the Minister of Finance may determine from time to time;
- 1.2.9 **Commencement Date** means the first day of the month after the date of Activation of the particular BCX Product;
- 1.2.10 **CPA** means the Consumer Protection Act, 68 of 2008 read together with regulations promulgated thereunder, and any amendments thereto;
- 1.2.11 **CPI** means the Consumer Price Index (CPI) Headline Inflation Rate as published by Statistics South Africa, or if the publication of such Index is discontinued, the most similar Index as compiled and published monthly by Statistics South Africa in a statistical news release or anybody authorised in its stead, in terms of the Statistics Act 1976 as amended (or any statute replacing such Act)
- 1.2.12 **Customer** means the party that completed the order form or service contract form for the Service;
- 1.2.13 **Data** means information carried by the Network;
- 1.2.14 **Data Amount** means the total data transferred to and from the network as measured in megabytes and/or kilobytes;
- 1.2.15 **Data Bundle** means the total amount of data, which the Customer has elected to pre-pay in any given month, which, if exceeded, will require further payment.

- 1.2.16 **Elected Package Option** means the package option chosen by the Customer;
- 1.2.17 “Electronic Communications” means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conductor/conduit, but does not include content service, as defined in section 1 of the Act .
- 1.2.18 **Excess Data Usage** means the Customer’s monthly used data transfer in excess of the maximum monthly data usage allowed for in the Customer’s elected Data Bundle.
- 1.2.19 **Expiry Date** means the end of the period after receipt of a notice of termination as contemplated in clause 2.;
- 1.2.20 **BCX Charges** means all charges in terms of this Agreement including, but not limited to, the installation charges, monthly charges (which include monthly service charges, maintenance charges and Service charges) and such Excess Data Usage charges as may be agreed with the Customer from time to time,
- 1.2.21 **BCX Product** means the device or devices supplied by BCX including any associated software necessary to render the Service.
- 1.2.22 **BCX GSM** means the Global Systems for Mobile Communications as defined by the European Technical Standards Institute and includes any other related technical standard including 3GPP;
- 1.2.23 **Initial Service Period** means the initial term of the Agreement as given on the Order.
- 1.2.24 **"Intellectual Property"** means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights

(including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

1.2.25 **Monitoring and Control Services** means a specific service provided by BCX for the collection of data at remote locations and representation of that data to the Customer from a central server or servers. It may also mean a service designed to provide remote control of virtual or physical items.

1.2.26 **Network** means the communications service provided by BCX for the transmission of a customer's Data on any technology;

1.2.27 **Order** means an order placed by a Customer on BCX, by completion of BCX's service order form or in any other form approved by BCX for the provision of the BCX Products and/or Services;

Premises means the physical address at which the BCX Product is installed or kept as stipulated in the Order and/or any other physical address to which the equipment may be moved after obtaining BCX's prior written consent;

1.2.28 **Replacement Cost** means the replacement cost of the BCX Product including any charges levied by BCX for replacement of any part thereof;

1.2.26 **Service(s)** means the provision of the products and/or services by BCX enumerated on the Order;

1.2.27 **Service Provider** means a third-party provider or reseller used by BCX to make the service available to the Customer;



- 1.2.28 “Telkom” means Telkom SA SOC Limited, Registration number 1991/005476/30, a public company incorporated in terms of the laws of the Republic of South Africa;
- 1.3 Words and expressions defined in any clause shall for the purposes of that clause, bear the meaning assigned to such words and expressions in such clause.

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the Commencement Date and shall, subject to clause 10, continue for the Initial Service Period specified in the Order or Service Agreement
- 2.2 Where a Customer is not a juristic person as intended in terms of the CPA, between 40 and 80 Business Days before the end of the Initial Service Period specified in the Order, BCX shall notify the Customer that the Initial Service Period is coming to an end and the Customer has an option to terminate the period of the Order or renew the Order for an additional fixed term, and that failure by the Customer to terminate or renew this Order per clause 2.3 below shall result in an automatic renewal of the agreement on a month to month basis on the same terms and conditions.
- 2.3 On Expiry of the Initial Service Period, the Customer (natural or juristic person) must inform BCX of its intention to terminate or renew the Order for an additional fixed term.
- 2.4 Failure by the Customer to terminate or renew this agreement per clause 2.3 above shall result in an automatic renewal of the agreement on a month to month basis on the same terms and conditions. During such month to month period, the Customer may terminate the Agreement at any time by giving 1 calendar months’ notice.
- 2.5 If the Customer is a ‘natural person’ (i.e. not a juristic person) as defined in CPA, the Customer may terminate this agreement at any time by giving not less than 20 Business Days written notice of its intention to do so. In such event, the Customer must pay all outstanding charges plus an amount equal to 20% of the remaining balance of the Order.



- 2.6 Notwithstanding the above clauses, provided the Initial Service Period is specified in the Order or Service Agreement as being for the duration of a short-term event such as a sporting event or a concert, BCX shall be entitled to payment for the total Initial Service Period.
- 2.7 BCX shall be entitled at any time and with immediate effect to temporarily or permanently suspend the Service, or part thereof and/or terminate this agreement, in all cases without liability in the event that any licence, permission or authorisation necessary for the operation of the Service is revoked or temporarily or permanently suspended.

3. SUPPLY

- 3.1 BCX shall utilize its best endeavours to promptly comply with all delivery, installation and/or activation requirements recorded in the Order but shall not be liable to the Customer in the event that such delivery, installation and/or activation is delayed or cancelled, for whatsoever reason.
- 3.2 All risk of loss or damage in and to the BCX Product supplied and delivered by BCX to the Customer shall pass to the Customer on delivery notwithstanding the Commencement date.
- 3.3 The Customer shall, within twenty-four hours, notify BCX if the BCX Product or any part thereof is lost, stolen or damaged.
- 3.4 The Customer hereby warrants and undertakes in favour of BCX that it:
 - 3.4.1 shall not use or allow the Services to be used for any improper, immoral or unlawful purpose, nor in any way which may cause injury or damage to persons or property or an impairment or interruption to the service; shall only use the BCX Product installed and delivered by BCX to gain access to the Service, and will comply with all relevant legislation and regulations imposed by any other competent authority and all directives issued by BCX relating to the use of the BCX Product and/or Service(s); recognizes that the ownership in and to the BCX Product remains with BCX and no right, title or interest in the BCX Product vests in the Customer;



- 3.4.2 shall not permit any third party to reverse engineer, decompile, modify or tamper with the cable infrastructure, antenna systems, hardware, software or firmware of and in the BCX Product.

4. CHARGES

- 4.1 In consideration of the provision of the BCX Product and Services, the Customer shall effect payment to BCX of the charges detailed on the Order, whether or not the services are actually being utilized by the Customer
- 4.2 Use of the BCX Product is included in the monthly service charges.
- 4.3 BCX may increase its charges annually in line with the CPI index (usually on the 1st April each year) and such increased charges will be published in its price list.
- 4.4 BCX may introduce new/additional charges from time to time and such additional charges will be communicated in writing to Customers before being levied. Should the Customer not accept such additional charges, the Customer may, notwithstanding clause 2.1, elect to cancel this Agreement on 2 months written notice.
- 4.5 Any upgrade from one package option to another BCX package shall be subject to BCX's approval in its discretion and only be effected on written confirmation by BCX and, in addition to any applicable charges in terms of clause 4.1 hereof, BCX shall be entitled to levy a migration and/or administration fee for such migration.
- 4.6 BCX reserves the right to, by notice to the Customer in accordance with the provisions of the CPA, adjust charges after the expiry of the initial Agreement period to a month to month charge, if the Agreement is not extended for a fixed period with its associated charges.
- 4.7 The Customer shall be liable for any charges and/or cost incurred as a result of the Customer's abuse, misuse or unauthorized use of the BCX Product and/or Services, and/or for any charges and/or cost incurred as a result of the loss or theft of the BCX Product and/or incurred as a result of the Customer's failure to comply with any provision contained in the Agreement.

5. PAYMENT

- 5.1 The first payment shall be made upon receipt of the initial invoice from BCX and shall include the installation charge and the pro rata apportionment of the monthly charges.
- 5.2 Thereafter all payments shall be made in a single monthly instalment without any deductions whatsoever on the last day of each and every month until Expiry Date, by way of debit order payment or other payment method acceptable by BCX and according to the debit order authorization contained in the Order into the account, that BCX may from time to time in writing direct.
- 5.3 New services installed prior to the 15th of a trading month will be billed for in full for that month. Services installed after the 15th of a trading month will be billed for in the follow month.
- 5.4 Monthly charges shall be invoiced and payable monthly in advance and all other charges shall be payable on demand.
- 5.5 Invoices and statements may be emailed, faxed or sent by regular mail service to Customers.
- 5.6 BCX reserves the right to suspend its service if amounts due are not paid within 10 days of due date as indicated on the BCX invoice.
- 5.7 The Customer agrees that BCX may perform credit control checks as it deems necessary at a credit bureau of its choice. The Customer acknowledges and agrees that any information regarding the Customer's creditworthiness, defaults in payments to BCX and details of how the Customer has conducted the account with BCX may be disclosed to any other creditor and/or to one or more credit information bureau. The Customer indemnifies BCX in respect of any claim whatsoever or howsoever arising, including third party claims, from BCX exercising these rights.
- 5.8 BCX shall be entitled to charge interest at the rate of 4% per annum above the then existing prime overdraft rate of ABSA Bank Limited if an account rendered to a



Customer is not paid on or before the due date, up to and including the date of payment.

6. MAINTENANCE AND SUPPORT

- 6.1 If the BCX Product fails to operate in a satisfactory way for any reason, the Customer shall give notification thereof to BCX by way of telephonic or email communication to the Call Centre. Telephone and email support will be provided free of charge. The Call Centre will upon receipt of such communication use its best endeavours to respond in terms of service levels in place, provided that the response time in dealing with such a complaint shall be within a reasonable time after receipt of such notice and having regard to the urgency and nature of the incident and physical location of the BCX Product and/or Customer premises taking into account any travelling time from the nearest BCX service centres.
- 6.2 Unless otherwise agreed by means of an extended service Agreement, support will be provided only on Business Days during Business Hours. At its option, BCX may agree to provide both Call Centre and field service assistance to Customers without an extended service Agreement outside of Business Days or Business Hours. In this case, the Customer will normally be liable for additional charges.
- 6.3 Subject to payment of the BCX Charges and unless a 'no maintenance' option is shown on the Order, defective BCX Products will be maintained, repaired or replaced by BCX and the Customer shall be liable for payment of BCX's quoted service charges for faults that are not related to the BCX Product.
- 6.4 The BCX Product incorporates no field serviceable parts and repair of faulty BCX Products shall be achieved by replacement at BCX's discretion.
- 6.5 The Customer shall be liable for callout charges if unwilling to co-operate with the telephonic or email support provided by the Call Centre.
- 6.6 Should it be found that a problem has arisen due to a third-party involvement (e.g. a bank or other vendor), the Customer shall be held liable for the call out charge and additional labour charges incurred by BCX.



- 6.7 Damage to the BCX Product due to insects, rodents, or liquids is not considered as wear and tear, and the Customer will, subject to investigation by BCX, be held liable for such damage. Replacement of the BCX Product damaged in this manner, is covered by section 9 of these terms.
- 6.8 Non BCX related components such as antennas (which may include a more efficient antenna due to a weak signal inside the Customer's premises), additional cabling and complex cabling will attract a separate charge for the component, as well as the service call charge for replacing, repairing or maintaining the aforementioned component.
- 6.9 Where a Customer has elected not to accept the maintenance plan offered by BCX, the Customer will be invoiced for a call out charge to correct an issue requiring BCX to perform a call out to the Customer's premises.
- 6.10 The following call outs are deemed billable for Customers, as they fall outside the maintenance of the BCX Product:
- Additional bank terminal to be connected, repositioning of an BCX Product, an incorrect and/or faulty bank terminal supplied by a bank, installation of antennas, physically damaged cables, delivery and installation of additional cables, installation of additional sensing devices or gateways, malicious damage to BCX Product, call out to correct a network failure (not covered by maintenance plan), collection charges or other charges not related to BCX Product.
- 6.11 The following components attract a separate charge and Customers will be invoiced accordingly: external antennas (installed outside Customer's premises), additional antennas, power supply products, additional cabling.
- 6.12 Where the Customer requests that on-site service of a BCX Product is 'urgent' either by telephone, email or on the Order, the site visit will be prioritized above other work and an additional urgent call out fee will apply.
- 6.13 Where the Customer requests that on-site service of a BCX Product takes place outside normal working hours an additional after-hours maintenance fee will apply.

7. DELIVERY, INSTALLATION, COMMISSIONING AND DECOMMISSIONING OF THE BCX PRODUCT

- 7.1 The Customer shall, at its own cost and expense, ensure that the premises (which include the installation areas, electrical outlets, connection requirements and access ways) are suitable for the installation and electrical connection of the BCX Product when delivered for installation and thereafter.
- 7.2 The Customer shall be liable for payment of a non-refundable once off connection fee in accordance with BCX's charges or quoted tariff.
- 7.3 The installation of the BCX Product shall be affected by BCX or a person/s duly authorized by BCX.
- 7.4 Where the Customer requests that the installation of a BCX Product is 'urgent' either by telephone, email or on the Order, the installation of the BCX Product will be prioritized above other work and an additional urgent call out fee will apply.
- 7.5 In the event that the Customer fails to honour the arrangement for the installation and/or the environment is not suitable for installation as intended in clause 7.1 above, the Customer shall be liable for Call out charges and any other additional charges incurred by BCX.

8. USE OF THE BCX PRODUCT

The Customer shall: -

- 8.1 at all times keep the BCX Product/s in its possession or under its control and take reasonable care in the use thereof and shall
not allow the BCX Product/s to be removed from the premises;
- 8.2 provide proper storage for the BCX Product/s and protect it from loss or damage;
- 8.3 only allow competent and authorized persons to operate the BCX Product at the Customer's expense and only for the purposes for which it was designed and/or intended;



- 8.4 not affect any alterations to or modifications of or upgrades to the BCX Product without BCX's prior written consent being obtained. This notwithstanding, it is specially agreed that in the event of the BCX Product being altered or modified by the Customer, with or without the consent of BCX, BCX shall not be liable to compensate the Customer for disruption to the Service caused by the said alterations or modifications;
- 8.5 permit BCX to inspect and examine the BCX Product at all reasonable times and arrange for BCX to be admitted to the premises for this purpose;
- 8.6 not allow any removal or obliteration of identification marks or serial numbers in and/or on the BCX Product;
- 8.7 BCX may be required to suspend the service to Customers from time to time because of technical failure or maintenance to the supporting network. Customers may not cancel Agreements because of the suspended service and billing remains intact.
- 8.8 the Customer shall not allow any entities, or any other service provider not approved by BCX to de-commission, disconnect or remove or work on any BCX products or services.

9. LOSS, DAMAGE OR DESTRUCTION OF THE BCX PRODUCT

- 9.1 On election by the Customer of the required service and payment of the associated monthly charge, BCX may, notwithstanding 3.2 and in recognition of 3.4.3 and without prejudice to any other rights, at its sole discretion elect to repair or replace the BCX Product in the event of damage due to fire, storm, theft, insects, rodents, liquids, general misuse, or in the event of a technology upgrade
- 9.2 In the event of the BCX Product or part thereof being damaged or stolen as contemplated in 9.1, the Customer shall be liable for the replacement cost of the BCX product and pay all the charges outstanding in respect of the period prior to such damage or theft together with any interest thereon in terms of this Agreement. BCX may in its sole discretion replace the BCX Product or part thereof, after payment by the Customer of a reinstallation charge.



- 9.3 If the BCX Product or any part thereof is stolen, the Customer shall immediately notify the South African Police Service and BCX may only replace the stolen BCX Product or part as intended in terms of clause 9.2 subject to presentation of a South African Police Service case number by the Customer and only if the theft was accompanied by violent or forced entry.
- 9.4 In the event of the BCX Product or part thereof being lost or damaged beyond economical repair for any reason other than reasonable wear and tear, BCX may elect, in its sole discretion, to terminate the Agreement, provided that this Agreement shall not be terminated if the parties reach agreement on the substitution of the BCX Product. Payment by the Customer of the Replacement Cost shall be deemed to constitute full agreement in this regard.
- 9.5 BCX shall not during the period of this Agreement or after expiry thereof be liable for any damage to the BCX Product caused by the Customer's misuse or negligence and the Customer shall be obliged to effect all such repairs or otherwise necessary as to ensure that the BCX Product is and remains in good working order at all times during the period of this Agreement.

10. BREACH

- 10.1 Should:
- 10.1.1 after the expiry of 10 days' notice of non-payment, the Customer continue to default in the payment of any monthly charges or any other sum payable hereunder; or
 - 10.1.2 The Customer allow any judgment which might be taken against it to remain unsatisfied or not appealed for 5 (five) business days; or
 - 10.1.3 the Customer be sequestrated or commit any act of insolvency or call a meeting of creditors or make any arrangement or composition with its creditors or in the event of it being wound-up voluntary or compulsory or be placed under judicial management, or have a receiver appointed over its

assets or be placed under debt review or be the subject of business rescue;
or

10.1.4 the Customer's property, the BCX Product or part thereof being attached under any writ of execution or legal process issued against the Customer or under any attachment for rent; or

10.1.5 the Customer abandons the BCX Product or part thereof or do or suffer to be done any act or thing which may prejudice BCX's rights under this Agreement; or

10.1.6 the Customer commit or suffer or permit the commission of any breach of any of the provisions of this Agreement; or

10.1.7 the Customer, despite warning, so persistently breaches the provisions of this Agreement so as to evidence an intention not to be bound by the terms hereof; or

10.1.8 the Customer fails to obtain BCX's consent regarding any change of premises;

10.1.9 the Customer cancels the debit order referred to in 5.1.2 without the prior written consent of BCX; or

10.1.10 the Customer change its banking details upon which the debit order referred to in clause 5.1.2 relies without giving BCX prior written notification of such change; then and in any of the aforesaid events BCX, without prejudice to BCX's other rights under this Agreement or at common law, and notwithstanding any previous waiver or anything to the contrary herein contained, shall be entitled but not obliged and without further notice

forthwith: -

10.1.11 to suspend the Customers, access to the service; and/or to cancel this Agreement, retake possession of the BCX Product and to recover from the Customer the full balance of charges and any other sums payable by the Customer hereunder to date of such cancellation together with, as pre-



estimate liquidated damages, the future charges which could have fallen due in terms of this Agreement from the date of termination until the earliest possible expiry date and any other damages.

10.1.12 On termination of the Agreement, BCX will collect the BCX Product and the Customer shall be liable for payment of the collection charge, and shall further, upon demand, pay BCX all amounts due under this Agreement at the date of such termination, and if the BCX Product is not recoverable for whatsoever reasons, the BCX Product Replacement Cost.

10.1.13 Upon termination of this Agreement, BCX shall disconnect the BCX Product from the Service.

11. GENERAL

11.1 A certificate under the hand of any director or manager for the time being of BCX (whose appointment need not be proved) as to any amount due and owing by the Customer hereunder shall constitute prima facie evidence of the matters herein stated for the purposes of provisional sentence or summary judgment proceedings or for any other purpose.

11.2 Either party shall be liable to pay the other on demand all legal and other expenses incurred by a party in enforcing its rights under this Agreement, including (but not limited to) collection commission, tracing fees and other legal expenses, on the scale as between attorney and own client, whether action is instituted or not;

11.3 This Agreement constitutes the whole of the Agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided hereto no amendment, alteration, addition, variation or consequential cancellation shall be of any force or effect unless reduced to writing and signed by the parties hereto.

11.4 The parties agree that no other conditions, warranties or representations whether oral or written, and whether express or implied, whether by statute or otherwise shall apply hereto.

11.5 In no event will BCX or its subcontractors be liable to the Customer or anyone else for special, collateral, exemplary, indirect, incidental or consequential damages (including without limitation, loss of goodwill, loss of profits or revenues, loss of

savings, loss of use, interruptions of business, and claims of Customer), whether such damages occur prior or subsequent to, or are alleged as a result of, delict or breach of any of the provisions of this Agreement, even if BCX has been advised of the possibility of such damages. All warranties that may be deemed applicable to the Equipment or Services, including but not limited to implied warranties of merchantability or fitness for a particular purpose, are expressly disclaimed.

More specifically BCX will not be liable to the Customer or any third party:

- 11.5.1 for any loss or damage arising directly or indirectly as a result of abuse, misuse or unauthorized use of the BCX Product, or;
 - 11.5.2 for any loss or damage arising directly or indirectly as a result of the Customer's failure to maintain the premises in accordance with BCX's specifications;
 - 11.5.3 if the BCX Product or any part thereof has been operated other than materially in accordance with the manufacturer's technical specifications;
 - 11.5.4 if the BCX Product or any part thereof has been modified, altered or added to without the prior written consent of BCX, the onus of proof being on the Customer;
 - 11.5.5 if the BCX Product has been operated other than in accordance with its intended purpose;
 - 11.5.6 for any loss of revenue, business contracts, anticipated savings, or profits or for any indirect or consequential loss whatsoever for any reason including, but not limited to, unavailability or inaccuracy of the service due to a network malfunction or defective BCX Product.
- 11.6 This Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa, and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law. BCX shall at its sole election be entitled to institute any action out of either the High or any Magistrate's court having jurisdiction.



- 11.7 BCX shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security. The Customer is responsible for maintaining the security of its internal network from unauthorised access.
- 11.8 BCX in certain circumstances only provides access to the network as a service. BCX does not operate or control the information, services, opinions or other content that is transmitted over the network, and BCX makes no warranties or representation regarding any such information, services, opinions or other content. The customer agrees that it shall make no claim whatsoever against BCX relating to the content transmitted over the network or respecting any information, Product, service or software ordered through or provided by virtue of the Internet. BCX reserves the right to take measures as may be necessary, in BCX's sole discretion, to ensure security and continuity of service on the BCX network, including but not limited to identification and blocking or filtering of internet traffic sources which BCX deems to
- 11.9 pose a security risk or operational risk or a violation of its Terms of use policy. In addition, the Customer understands that BCX does not own or control other third-party networks outside of the BCX network, and BCX is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between BCX network and other third-party networks.
- 11.10 The provision of the BCX's Product, Services or Solution is further subject to the BCX's Terms of use policy as available on the BCX web site (<http://www.BCX.co.za/>)
- 11.11 Notwithstanding anything contained to the contrary in this Agreement, BCX shall be entitled, in its reasonable discretion, to amend this Agreement from time to time (prospectively and not retroactively), on 7 (seven) days written notice to the Customer.

12. CESSION AND ASSIGNMENT

- 12.1 The Customer may not cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations in accordance with this Agreement except with BCX's prior written consent, such consent not to be unreasonably withheld.

- 12.2 BCX shall be entitled, at any time, to cede, transfer, assign or delegate or otherwise deal with all or any of its rights and obligations in accordance with these terms to any other juristic or natural person, without the Customer's consent provided that all obligations to the Customer shall remain intact.

13. FORCE MAJEURE

Neither BCX nor Customer shall be under any liability for any breach of any provision of the Agreement or any other failure hereunder if such breach or failure is as a result of Acts of God, War (whether declared or not), sabotage, riots, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, act or default of any licenced electronic communication network service or electronic communication service operator, supplier, agent or subcontractor, industrial disputes of any kind, physical obstacles or atmospheric conditions or any other cause beyond the control of either BCX or Customer.

14. MONITORING AND CONTROL SERVICES

The Customer agrees that where Monitoring and Control Services are offered as part of any BCX Service

Agreement, the terms contained in this Clause 14 shall also apply:

- 14.1 BCX shall not whether during the period of such Order or Service Agreement or after expiry thereof be liable for any actual or consequential loss arising from:
- 14.1.1 failure to correctly display data or to control or command any physical or virtual object due to technical anomalies due to technical anomalies or software errors; or
 - 14.1.2 incorrect interpretation of data provided by the Customer's own equipment or sensing devices; or

14.1.3 late or omitted data due to technical anomalies, network conditions or software errors.

14.2 The Customer acknowledges that the Monitoring and Control Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk.

BCX makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.

14.3 The Customer acknowledges and agrees that BCX and/or its licensors own all intellectual property rights in the Monitoring and Control Services. Except as expressly stated, the use of the services does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the services.

14.4 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the services that:

14.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

14.4.2 facilitates illegal activity;

14.4.3 depicts sexually explicit images;

14.4.4 promotes unlawful violence;

14.4.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; in a manner that is otherwise illegal or causes damage or injury to any person or property.

14.5 The Customer shall not:



- 14.5.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the software; or
- 14.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Monitoring and Control Services; or
- 14.5.3 access all or any part of the services in order to build a product or service which competes with Monitoring and Control Services; or
- 14.5.4 use the Monitoring and Control Services to provide services to third parties; or license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit, or otherwise make available the Monitoring and Control Services to any third party without the written permission of BCX
- 14.6 Any usernames and / or passwords provided by BCX to the Customer to provide access to the Monitoring and Control Services are solely for the Customer's own use and must be kept secret and not divulged to third parties except in the case of third parties for the purpose of effecting maintenance on behalf of the Customer.

15. SURETY BY DIRECTORS OF A COMPANY (PUBLIC OR PRIVATE) OR MEMBERS OF A CLOSED CORPORATION

Where a company or closed corporation is the Customer, the person signing the service contract, in his/her capacity as a director of a company or a member of a closed corporation, accepts, acknowledges and agrees that he/she is liable in his/her personal capacity for all outstanding monies owed to BCX in the event that the company or closed corporation (the Customer) fails, for whatever reason, to pay all the outstanding charges.

16. INTELLECTUAL PROPERTY RIGHTS (IPR)

BCX Owns BCX IPR. BCX reserves all rights, including, but not limited to, ownership, title, and all other rights and interest in, and to, any Intellectual Property that BCX owned prior to providing Services under the Agreement, any Intellectual Property



that BCX develops, creates, or otherwise acquires independently of the Services, and any Intellectual Property that BCX develops, creates, or otherwise acquires (excluding Customer IP) while performing Services under the Agreement. No provision of this Agreement shall be construed as granting the Customer any right to BCX' s IPR

- 16.1 **Use of IPR:** In the event that either party wishes to use the other Party's intellectual property for whatsoever reason during the Contract Period, it may only do by obtain the prior written approval of the party owning the IPR.

17. INDEMNIFICATION

Indemnification by the Customer: the Customer agrees to indemnify, defend and hold harmless BCX and BCX' s officers,

directors, employees and agents from and against any and all losses, costs, liabilities or expenses (including but not limited to reasonable attorney's fees) arising, directly or indirectly, out of or in connection with (i) the possession, use, selection, distribution, delivery, resale, purchase or operation of the BCX' s Product, Services or Solution by the Customer; (ii) the wilful or negligent acts or omissions of the Customer or any of its subcontractors; (iii) the customer's failure to submit or accurately complete any form or document required (iv) the Customer's breach of this Agreement or any of applicable BCX' s policies and procedures referenced herein, including without limitation any failure by the customer with its obligations pursuant to this Agreement; (iv) the Customer's unauthorised use of or combination of BCX' s marks licensed to it under this Agreement in a manner that infringes upon any third party's intellectual property rights., to the extent that the infringement would not have arisen absent such use or combination by the customer, or (v) any claim that any of the marks, logos, or other material provided by the Customer to BCX, if any, infringes any patent, copyright, or other proprietary right of any third party. Where a Consumer suffers any loss or damages as a result of the use of the BCX's Product, Services or Solution, the consumer in this case will be allowed to avail itself to the provisions housed under section 691 of the CPA, but subject always to the defences and



exceptions permissible and available to BCX and its service providers under section 61 of the CPA.

18. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

Although BCX respects you, the Customer's privacy and to this end your right not to have your personal data misused or distributed to other persons, you, the Customer have to comply with the provisions of RICA, which is a law which requires that bodies such as BCX verify your details before they are able to provide you with a communication service or device. This clause sets out BCX's undertaking to protect and respect your personal data and not to misuse it. It also sets out your undertaking to comply with RICA.

18.1 BCX at any time reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied.

18.2 BCX shall also be entitled to furnish any information relating to the Customer's account and compliance with these conditions to any registered credit bureau.

18.2 The customer warrants and represents that all information supplied by it is true, correct and complete and indemnifies and holds BCX harmless against all claims, of whatsoever nature, that arise, directly or indirectly, as a result of any incorrect information being furnished.

18.3 BCX will use the Customer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to process and use the Customer personal data only for the purpose for which it has been collected and undertakes that this processing will be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time.

18.4 The Customer accepts that RICA applies to the BCX's Product, Services or Solution, which the Customer has requested BCX to provide it with under this Agreement, and



agrees that it must, where applicable, comply with the relevant requirements of RICA, including, without generalising:

18.4.1 to provide BCX with all required Personal Data and other details which BCX is required to obtain from the Customer, in terms of section 39 of RICA.

18.4.2 not to transfer the BCX' s Product, Services or Solution to another person without providing BCX with the Personal Data and other details of the person who is taking over the BCX' s Product, Services or Solution.

18.5 The customer acknowledges and accepts that where it does not comply with these provisions that this will amount to a material breach by the customer of this agreement which will allow BCX to cancel the agreement and to claim damages as a result of the cancellation.

18.6 The Customer also acknowledges and accepts that where it does not comply with the provisions set out under clause 18.4, that this will be a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Customer as per the requirements of RICA.

19. Discontinuing of services and end of life

19.1 BCX may from time to time, and on notice where this is possible, or without notice where this is not reasonable possible, and without prejudice to any other claims or remedies, which BCX may have in terms hereof or in law, discontinue or terminate or replace any part of the Service and where applicable the right to use the equipment, or in its discretion disconnect the equipment from the network in any of the following circumstances:

19.1.1 where the Service or equipment is found to contain a defect, which enables the Customer to exploit the Service to the detriment of BCX;

19.1.2 where the Service or equipment has reached the end of its lifespan and is uneconomical to maintain or continue;

19.1.3 where it is no viable to use or provide a particular Service;



- 19.1.4 in response to an instruction from the Regulator or other body in terms of applicable law, to discontinue the Service or equipment.
- 19.1.5 where the Customer uses equipment that is not approved by the Regulator for such use;
- 19.1.6 if the Customer has received the Service as a result of fraud or misrepresentation;
- 19.1.7 if the Customer uses in connection with the Service, equipment that belongs to BCX but which the Customer has obtained illegally;
- 19.1.8 if the Customer does or allows to be done any act or omission, which in BCX's opinion will or may have the effect of negatively affecting the operation of the Service or the network;
- 19.1.9 if the Customer is using, or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of any law; or
- 19.1.10 if BCX has been instructed to do so by any authority competent to issue such instruction.