



DXN MASTER CUSTOMER AGREEMENT

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It is agreed as follows.

1 Definitions as used in the MCA, Service Schedule or Service Order

Affiliate, in respect of any Party, means any entity that directly, or indirectly through one or more intermediaries, is controlled by, is under common control with, or controls, a Party. For purposes of this definition, 'control' means control or direction over shares, securities or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights or powers entitling the holder thereof to direct (or to cause the direction of) or to manage the affairs and business of such entity. Controls, controlled, and controlling each has a similar meaning.

Business Day means Monday to Friday excluding any day that is a public holiday at the place that the Data Centre is located.

Confidential Information means all information (in whatever format) designated as such by the relevant Party, together with such information which relates to the business affairs, customers, products, developments, trade secrets, know-how and personnel of either party and which may reasonably be regarded as the confidential information of the disclosing party and expressly includes the MCA, Service Schedules and any Service Orders.

Customer Contract means the contract formed in accordance with clause 2 of this MCA.

Customer Users mean officers, employees, agents, contractors or representatives of the Customer.

Date Centre Service means the provision by DXN of racks for housing computers and associated equipment as well as power distribution and cooling services to support those racks more particularly described in the Data Centre Service Schedule.

DXN Policies and Procedures means the document which dictates the policies and procedures governing access to the Data Centre Service site.

Documentation means the user and other technical manuals provided to the Customer in connection with the Services.

Fault means any inconsistency in the performance of a Service provided to the Customer that impacts use of that Service.

Fees means fees for the Services as agreed by the parties in the relevant Service Order as amended by the parties from time to time in accordance with this MCA and excludes out of pocket expenses.

Force Majeure Event has the meaning set out in clause 18.1.

Initial Term means, in respect of a Service, the minimum contract period specified in a Service Order applicable to that Service, which is deemed to commence on the Ready for Service Date.

Insolvency Event means any of the following events in relation to a Party:

- (a) The Party informs the other Party in writing or informs creditors generally or passes a resolution to the effect that it is insolvent or is likely to become insolvent or the Party is deemed to be insolvent under any legislation;
- (b) The party commits an act of bankruptcy, has a bankruptcy petition present against it or is made or declared bankrupt;
- (c) The Party enters, or attempts or proposes to enter a scheme of arrangement or any other form of court sanctioned corporate reconstruction (other than if the Party can demonstrate to the satisfaction of the other Party that it is to carry out a reconstruction or amalgamation while solvent);
- (d) The Party enters or attempts to enter or proposes to enter a compromise or other arrangement with creditors or any class of its creditors;

- (e) The Party has a liquidator, provisional liquidator, administrator, insolvency officer or any other similar official appointed to it or has a receiver, receiver and manager or other controller or similar official appointed over its property or part of its property;
- (f) The Party takes any steps to obtain protection or is granted protection from creditors under any law;
- (g) Any charge, mortgage or encumbrance is enforced or is exercised against any asset of the Party;
- (h) The Party is taken to have failed to comply with a statutory demand or has an application made to the court for its winding up and such application is not withdrawn or dismissed within 10 Business Days;
- (i) The Party has a winding up order made against it, is deregistered, dissolved or has any steps taken against it to enforce a judgment or a court or an arbitral award; or
- (j) The Party has something having substantially similar effect to any of the events specified above occur in any jurisdiction under or in respect of any existing or future law.

Intellectual Property Rights means all intellectual property or all intellectual property rights, registered or unregistered including but not limited to copyright (including software), trademarks, service marks, trade secrets, patents, patent applications, designs, know-how, inventions moral rights other proprietary rights and any application or right to apply for registration of any rights referred to herein.

Network means the communications links that DXN installs at its site and are used by Customer to connect to their Services.

Party means DXN or the Customer, and Parties mean both of them.

Personal Information has the meaning given to that term in the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth).

Property has the same meaning as assigned to it in clause 9.2.

Price Model means the pricing detailed in the Service Order.

Ready for Service Date (RFS Date) means the date notified to the Customer as the RFS Date by DXN or where DXN has not notified the Customer of the RFS Date, the date on which the Service is first made available to the Customer.

Rebates mean the amounts specified to be payable by DXN as a result of Fault as set out in the applicable Service Level Agreement.

Services means product or services provided to Customer by DXN pursuant to a Service Schedule and Service Order executed by the parties as amended from time to time in accordance with the Customer Contract.

Service Levels mean the speed, rate, response time or other measure of performance set out in a Service Level Agreement on DXN's website.

Service Level Agreement means DXN's service level agreement which can be found at www.dxn.solutions/legal as amended from time to time provided the Customer is not worse off as a result of the amendments.

Service Order means an order for the purchase of Services in DXN's standard format executed by the Customer and accepted by DXN as varied from time to time by the Parties in accordance with this agreement.

Service Schedule means a schedule which sets out the specifications, system requirements and performance capabilities of Services that is provided by DXN and executed by the parties .

Support Centre means DXN's technical assistance centre.

Supplier means a wholesale supplier of services, software, equipment, network or other supplier who DXN may use from time to time to supply Services to Customer.

Tax means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services tax or transaction tax, duty or charge, excluding taxes on profit or capital gains.

Term means the term of the Customer Contract including the Initial Term and any extensions.

Withdrawal Fee means the higher of:

- (a) The sum of the monthly fee payable in respect of all Services being cancelled and associated set up fees; or
- (b) all infrastructure, equipment and installation costs incurred by DXN in connection with preparation for the provision of the Services including, without limitation, costs payable to DXN's suppliers for the early termination of the associated Services.

2 Incorporation of MCA

- 2.1 The Customer must execute a Service Order for acceptance by DXN before it is able to receive a Service.
- 2.2 If DXN agrees to provide the Service, the terms and conditions in this MCA and the relevant Service Schedule which is executed by the parties shall be deemed incorporated into the Service Order executed by the parties and those documents shall together form the Customer contract ('Customer Contract').
- 2.3 In the event of any express conflict between any terms of this MCA, the Service Schedule or the Service Order, the terms of this Service Order will govern to the extent of the inconsistency.

3 Services

Delivery of Services

- 3.1 DXN will use commercially reasonable efforts to deliver the Services as soon as practicable after a Service Order is executed by both parties.
- 3.2 Where a Customer is granted access to the DXN Data Centre Infrastructure Management (**DCIM**) portal, the Customer may also procure Services from the DCIM portal in accordance with clause 6.
- 3.3 The Customer shall in a timely manner and at its own expense actively co-operate with DXN and provide or make available to DXN all relevant resources including, without limitation, all relevant information, documentation and staff reasonably required by DXN to enable DXN to deliver the Services and to perform its obligations under the relevant Customer Contract.

Variation to Services

- 3.4 Subject to clause 3.6, if either party wishes to propose a change to the scope of the Services, it must be effected only in one of the following manners:
 - 3.4.1 having both Parties execute a new Service Order; or
 - 3.4.2 where the option to vary the scope is made available by DXN in the DCIM, the Customer may request the variation in scope by applying through the DCIM following which DXN will review and confirm acceptance or rejection of the request as soon as possible.
- 3.5 Following a variation in accordance with clause 3.4.2, the Parties agree that the relevant executed Service Order is amended in the manner set out in the records held in the DCIM and the Customer agrees that the DCIM is the true record of the details of the Services except in the case of manifest error.
- 3.6 The Customer accepts that where the proposed change to the scope of the Services has the effect of decreasing the Fees payable by the Customer, clause 13.9 applies as though the Customer is terminating part of the Services for convenience.

Performance of Services

- 3.7 DXN and its Suppliers do not warrant or represent the performance, accuracy, reliability or continued availability of the Services and the Network or that the Services and the Network will operate free from faults, errors or interruptions.
- 3.8 DXN will use its best endeavours to provide the Services in accordance with the relevant Service Levels as set out in the Service Level Agreement.
- 3.9 Customer acknowledges that the Services may not be available from time to time as a result of a number of factors, including capacity constraints, electromagnetic interference, adverse weather conditions, excessive network use, equipment failure, Force Majeure Event or during maintenance activities and that in such circumstances, DXN is not obliged to supply the Services.

Use of the Services

- 3.10 The Customer must:
 - 3.10.1 use the Services in accordance with the Customer Contract, any Documentation, DXN Policies and Procedures and any applicable law;
 - 3.10.2 Not do or omit to do anything which the Customer is aware or ought to reasonably be aware could have an adverse effect on DXN's Service or infrastructure including any physical property located at the Data Centre site;
 - 3.10.3 Comply with any instructions, policies or procedures given by DXN that relate to protecting the integrity of DXN's, its Suppliers or any other person's network or the health or safety of any person or physical property; and
 - 3.10.4 Ensure and is responsible for implementing and maintaining the security of their network and equipment and agree that it is liable to pay all charges in connections with use of a Service resulting from a breach of the Customer's security.

4 Payment Terms

Customer to Pay

- 4.1 The Customer's right to receive Services for the Term is conditional upon the timely payment of all Fees and other charges which are due and payable by the Customer in accordance with the Customer Contract. The Customer is liable for all Fees, whether or not the Customer authorised the particular use of the Service by another person, including Fees resulting from hacking or other breach of security, viral infection or any computer or related equipment, attacks from the Internet, denial of service attacks, account or password misuse and misuse of the Service by third parties including the Customer Users or contractors.
- 4.2 DXN may start to invoice a Customer for a Service from the Ready for Service Date regardless of whether the Customer has used that Service from that date.
- 4.3 DXN will endeavour to invoice the Customer monthly in advance for the Services to be provided for the following month, unless otherwise specified in a Service Schedule or Service Order. However, DXN reserves the right to invoice the Customer at any time.
- 4.4 Customer shall pay the Fees and any other charges set out in a Service Order and for any other amounts due in accordance with the Customer Contract in full within thirty (30) days from the date of DXN's invoice. The Customer must pay all amounts owing by electronic transfer or other means as specified in the invoice and without set-off, counterclaim or deduction. A service charge of one and one-half percent (1.5%) per month (or such lower amount as permitted by applicable law) may be applied to all amounts that are not paid on time.
- 4.5 DXN may, on giving at least 30 days prior written notice, vary the Fees at any time to reflect the introduction of or a change to a law, tax, regulatory fee, or other governmental impost.
- 4.6 Notwithstanding any other provision of this agreement, DXN may pass on to the Customer all increases

in the cost of power immediately as they occur and any such increased power rates automatically supersede existing rates. DXN will notify the Customer as soon as practicable after any such increase in rates with the increased rates to apply retrospectively where applicable. A failure or delay to notify of any increase in rates does not negate the Customer's obligation to pay the increased rates.

Other Taxes

- 4.7 Except for taxes based on DXN's net income, the Customer will be responsible for payment of all applicable GST, value-added, consumption, use, excise, access, bypass, franchise, withholding, regulatory and any other similar taxes, fees, charges or surcharges, whether now or enacted in the future, however designated, imposed on or based on the provision, sale or use of the Services (**Taxes**).
- 4.8 If the Customer is or was required by law to make any deduction or withholding from any payment due to DXN, then, notwithstanding anything to the contrary in this agreement, the gross amount payable by the Customer to DXN will be increased so that, after any such deduction or withholding for Taxes, the net amount received by DXN will not be less than what DXN would have received had no such deduction or withholding been required.
- 4.9 The Fees current on the day of this agreement are as set out in the Service Fee Schedule.

Fee Disputes

- 4.10 DXN will not be obliged to resume performance of the Services until an outstanding invoice is paid.
- 4.11 In the event of a dispute in relation to an invoice, the Customer shall notify DXN within 14 days of receipt of the invoice of the reasons for disputing the invoice and the Customer shall pay the undisputed portion to DXN in accordance with this clause. The disputed portion shall be referred to the dispute resolution process.
- 4.12 The Customer must only dispute an invoice in good faith.

5 Maintenance

- 5.1 DXN and its Suppliers will, from time to time, conduct scheduled or unscheduled maintenance on the Network which may interfere with the provision of Services. DXN will use its best endeavours to provide Customer with 10 working days' notice of any scheduled maintenance where reasonably possible.
- 5.2 The Customer is required to report to DXN, any error or failure by DXN in respect of the delivery and performance of the Services as set out in the Service Order.
- 5.3 DXN will use reasonable efforts to rectify identified Faults within a reasonable period.
- 5.4 DXN is not responsible for rectifying Faults where the Fault arises in or is caused by its Suppliers or its Supplier networks, but DXN will request that its Suppliers rectify such Faults.
- 5.5 The Customer is responsible for repairing Faults relating to equipment which is not owned by DXN.
- 5.6 DXN may vary and update the Service Levels and Rebates by giving to the Customer 30 day's written notice provided such variation does not have a material adverse effect on the Customer. This variation will not constitute a variation contemplated in clause 3.4.
- 5.7 If in providing the Services, the Customer must access facilities which are owned or leased by DXN, the Customer must comply with DXN Policies and Procedures and with any security, work, health and safety or building entry policies or procedures notified by DXN from time to time in writing.

6 Customer Portal

- 6.1 Customers will be provided access to the DCIM portal to monitor and manage their Service.
- 6.2 Upon the purchase of their first eligible service, the Customer will be assigned login details and secure

passwords for an administrator as nominated by the Customer. The Customer is responsible for maintaining the confidentiality of all login details and secure passwords associated with all accounts that the Customer is provided access to.

- 6.3 The Customer may elect to nominate that its Customer Users be additional DCIM users and it is the Customer's responsibility to create and administer their nominated users, their privilege levels and their passwords.
- 6.4 DCIM users may be assigned authority to purchase new Services or upgrade existing Services through the portal (**Administrator Privilege**). The Customer acknowledges that by granting a Customer User Administrator Privilege in the DCIM portal, the Customer warrants that that Customer User has the relevant authority to purchase or modify Services on behalf of the Customer.

7 Warranties

- 7.1 Each Party warrants that it has the right to enter into this MCA and any Customer Contract and that it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted.
- 7.2 DXN warrants that any Services provided to Customer will be performed with due care in a professional and work-man like manner. Unless otherwise provided in the Customer Contract, any representation, warranty, condition, guarantee or undertaking that would be implied in a Customer Contract by legislation, common law, equity, trade, customer or usage or otherwise is excluded to the fullest extent permitted by law.
- 7.3 For the avoidance of doubt, any and all commitments, indemnities and other terms and conditions offered by DXN with respect to the provision of Services are made directly to the Customer and do not extend to any third parties or suppliers or partners of the Customer not party to this Customer Contract. To the extent permitted by law, DXN makes no warranties, express or implied or otherwise to any such third party including but not limited to implied warranties.

8 Confidentiality

- 8.1 Except as expressly permitted or required by this Customer Contract, Customer and DXN must not use any of the other's Confidential Information for any purpose other than performance of its obligations or exercise of its rights under this Customer Contract.
- 8.2 Except as expressly permitted or required by this Customer Contract, Customer and DXN must not disclose to any other person any of the other's Confidential Information.
- 8.3 Customer and DXN may disclose the other's Confidential Information:
 - 8.3.1 if required to do so by law or any regulatory authority, to the extent so required in accordance with clause 8.5; and
 - 8.3.2 to its personnel (including subcontractors) whose duties reasonably require such disclosure, on condition that the person making such disclosure:
 - i) ensures that each such person to whom such disclosure is made is informed of the confidentiality of the information and the obligations of confidentiality under this Customer Contract; and
 - ii) ensures that each such person to whom such disclosure is made complies with those obligations as if they were bound by them.
- 8.4 Except in accordance with the provisions of clauses 8.2 or as otherwise required to perform the Services, Customer and DXN must not disclose the terms of this Customer Contract.

- 8.5 If Customer or DXN is required to disclose the other's Confidential Information under clause 8.3 it must:
- 8.5.1 notify the other of the requirement to disclose as soon as is reasonably possible;
 - 8.5.2 take all steps necessary to allow the other to challenge or limit the requirement to disclose using any available channel or in any forum, including a court of law;
 - 8.5.3 provide the other with all assistance and co-operation reasonably requested by the other to assist it to challenge or limit the requirement to disclose; and
 - 8.5.4 use its best endeavours to ensure that confidential treatment will be given to the Confidential Information by any person to whom it is required to be disclosed.
- 8.6 If Customer or DXN becomes aware of a breach of this clause 8, including a breach of duty of its personnel or Suppliers with respect to the other's Confidential Information, it must:
- 8.6.1 notify the other as soon as it becomes aware of the breach;
 - 8.6.2 promptly provide the other with any information or assistance which it may reasonably request in order to minimise the loss or damage it may suffer as a result of the breach; and
 - 8.6.3 co-operate with the other in any investigation or litigation conducted by it to protect its rights in its Confidential Information.
- 8.7 Customer and DXN must establish and maintain effective security measures to prevent any unauthorised use or disclosure of, or unauthorised access, loss or damage to, any of the other's Confidential Information under its possession or control.
- 8.8 Customer and DXN must at all times keep all materials containing the other's Confidential Information separate from all other materials under its possession or control.
- 8.9 The provisions of this clause 8 survives termination or expiry of this Customer Contract for any reason whatsoever.

9 Intellectual Property Rights.

- 9.1 The parties agree that all rights or title to or interest in all Intellectual Property which is created prior to or independent of the MCA or a Service Schedule or a Service Order shall remain the sole and exclusive property of DXN or the Customer as the case may be unless expressly provided in the Service Order.
- 9.2 Any Intellectual Property developed by DXN or its Suppliers during the performance of Services ("Property"), and all worldwide Intellectual Property Rights will remain the exclusive property of DXN and its Suppliers (where such rights are owned by that Supplier).
- 9.3 Nothing in a Service Order will be deemed to grant, by implication, estoppel or otherwise, a license under any of DXN's existing or future Intellectual Property.
- 9.4 The Customer will not remove, alter, or obscure, any proprietary notices (including copyright notices) of DXN or its Suppliers.
- 9.5 The Customer will treat DXN's Intellectual Property as Confidential Information under clause 8.

10 Personal Information and Privacy

- 10.1 By providing the Customer's, Customer Users' Personal Information to DXN and obtaining the Services, the Customer acknowledges and consents to the collection, use, storage and disclosure of the Customer's, Customer Users' Personal Information
- 10.1.1 for purposes relating to the supply of the Service to the Customer. This includes:
- a) for billing and account management purposes, product and service development, managing

the Customer's relationship with DXN and marketing DXN's Services to the Customer;

- b) disclosure to a government agency to assist in the investigation of crime or the enforcement of any laws;
- c) disclosure to DXN's Suppliers and any dealer, agent or contractor for purposes relating to the supply of Services to the Customer; and
- d) disclosure to any third party as required by law; or

10.1.2 otherwise in accordance with DXN's privacy policy (see dxn.solutions/privacy-policy).

11 Fault reporting and recovery

Fault Reporting and Restoration

- 11.1 The Customer must report any Faults in relation to the Services to the DXN Support Centre as soon as reasonably practicable after it becomes aware of them.
- 11.2 Before reporting a Fault, the Customer should take all reasonable steps to ensure that the Fault is with the Service and not caused by any Customer owned equipment, software, content or services not supplied or provided by DXN.
- 11.3 The Customer is responsible for repairing faults relating to any Customer owned equipment, software, content or services not supplied or provided by DXN.

Charges for Restoration

- 11.4 The Customer is liable for all costs incurred by DXN in restoring a service where the fault arises as a result of:
 - 11.4.1 defects in Customer owned equipment or its installation, arising out of Customer software, content or communications services not supplied or provided by DXN; or
 - 11.4.2 any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

12 Dispute Resolution

- 12.1 Upon any dispute, controversy or claim between the parties, relating in any way to a Customer Contract, (except as it relates to a confidentiality violation or an Intellectual Property Right), each of the parties will designate a representative from the senior management, who (to the extent practicable) does not usually devote substantially all of his or her time to performance under the relevant Customer Contract, to attempt to resolve such a matter. The designated representatives will negotiate in good faith in an effort to resolve dispute over a period of twenty (20) days.
- 12.2 If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must be escalated to the CEO of each party for resolution.
- 12.3 If the dispute is not resolved in this twenty (20) day period the parties shall submit the matter to binding arbitration in Perth, Western Australia in accordance with the Commercial Arbitration Act 2010 (WA), by a single arbitrator, independent of both parties, who is skilled in the technical and business aspects of the IT industry. However, if there is a dispute regarding legal aspects including, without limitation, Intellectual Property Rights or a confidentiality violation, the dispute shall be resolved with regard to Western Australian and Australian Commonwealth laws in the courts of Perth, Western Australia

13 Term and Termination

Duration of MCA

13.1 This MCA continue to be in force until it is terminated in accordance with clause 13 or upon termination of all Customer Contracts.

Duration of Product Service Schedules

13.2 Any Product Service Schedule will remain in effect for as long as the relevant Service is being supplied by DXN to the Customer.

Term of Customer Contract and renewal

13.3 This Customer Contract shall remain in effect for the Term unless terminated as provided in this section.

13.4 The Customer Contract may be terminated at the expiry of the Initial Term by either party by notice in writing, which notice must be received by the other party at least 30 days prior to the end of the Initial Term.

13.5 Unless the Customer Contract is terminated in accordance with this clause, this Customer Contract shall be automatically renewed for successive periods of one month each (**Term**) until terminated by either party by giving to the other party 30 days prior written notice.

Early Termination of Customer Contract by DXN

13.6 DXN may terminate or suspend performance of a Customer Contract immediately if:

13.6.1 the Customer breaches the Customer Contract and fails to remedy the breach within thirty (30) days after receiving a notice detailing the breach and requiring that it be cured;

13.6.2 it provides to the Customer sixty (60) days prior written notice that DXN is unable to supply, or continue to supply, the Service to the Customer as a result of the cancellation, suspension or termination of any agreement with DXN Suppliers for whatever reason;

13.6.3 it provides to the Customer sixty (60) days prior written notice that DXN is unable to supply, or continue to supply, the Service to the Customer for any technical or commercial reasons;

13.6.4 the Customer is subject to an Insolvency Event;

13.6.5 the Customer fails to pay money owed to DXN within 10 Business Days after receiving written notice from DXN requesting payment;

13.6.6 the Customer ceases, or threatens to cease, carrying on its business; or

13.6.7 DXN reasonably believes that it has used a Service for unauthorised, criminal or unlawful activity.

13.7 Termination by DXN of a Customer Contract due to clauses 13.6.1, 13.6.5, 13.6.7 is deemed to be a termination of all other Customer Contracts unless expressed otherwise in writing by DXN.

13.8 On termination pursuant to clause 13.6, DXN may:

13.8.1 Retain all moneys paid to it under the Customer Contract for services that have been performed by DXN; and

13.8.2 Issue to the Customer an invoice for all unpaid Fees.

Early Termination by the Customer of MCA and/or Customer Contract

13.9 The Customer may terminate a Customer Contract at any time for convenience by giving to DXN 30 days prior written notice and paying to DXN:

13.9.1 Prior to the RFS Date, the Withdrawal Fee;

13.9.2 During the Initial Term or any subsequent term, the Fees that would otherwise be payable over the balance of the Term;

13.9.3 Plus where DXN has entered into an agreement with a Supplier for the supply of a service which is

required for the provision of Services to the Customer, an amount equal to any termination charges payable to the Supplier by DXN, as a result of the Customer's early termination for convenience.

- 13.10 The Customer agrees that the amounts payable under clause 13.9 is a reasonable estimate of DXN's likely financial loss if any Customer Contract or part of it is terminated prior to the end of the then current term.
- 13.11 The Customer may terminate a Customer Contract immediately if:
- 13.11.1 DXN breaches that Customer Contract and fails to remedy the breach within thirty (30) days after receiving a notice detailing the breach and requiring that it be cured;
 - 13.11.2 DXN is subject to an Insolvency Event; or
 - 13.11.3 DXN ceases, or threatens to cease, carrying on its business.
- 13.12 On termination pursuant to clause 13.11, DXN will refund to the Customer all moneys paid to DXN for Services not yet performed under the Customer Contract.

General

- 13.13 The parties acknowledge that a Fault in the Infrastructure Service shall not constitute a breach for the purpose of this clause. In the event of a Fault, the parties have recourse under clause 17 (Remedies) of this MCA.
- 13.14 Termination of any Customer Contract shall not limit either party from pursuing other remedies available to it, including injunctive relief.
- 13.15 Except as otherwise set forth in this Customer Contract, all Fees paid under or in connection with a Customer Contract are non-refundable and no right of set off exists for the Customer.
- 13.16 Upon termination of any Customer Contract for any reason, each Party shall remain liable for those obligations that accrued prior to the date of termination.
- 13.17 The parties' rights and obligations under this section and sections entitled Warranties, Remedies, Limitation of Liability, Indemnities, Confidentiality, General and Governing Law, and all other provisions that by their nature are intended to survive shall survive the expiration or earlier termination of this Customer Contract.
- 13.18 Upon expiration or termination of any Customer Contract for any reason, Customer shall:
- 13.18.1 cease using the relevant Services, applicable Intellectual Property Rights and related Confidential Information of DXN; and
 - 13.18.2 return or deliver to DXN a written certification signed by a corporate officer of Customer within thirty (30) days after termination that Customer has destroyed DXN's Documentation, related Confidential Information and all copies thereof, whether or not modified or merged into other materials.

14 Security Deposit and Credit Checks

- 14.1 If the Customer fails to pay any amount due under this Agreement by the due date for payment, DXN may by notice in writing require the Customer to pay a Security Deposit.
- 14.2 If required under clause 14.1, the Customer must pay the Security Deposit to DXN within five (5) Business Days of the date of the notice. In addition to any other rights available to it under this Agreement, DXN may terminate or suspend a Service if the Customer fails to pay the Security Deposit within the time required under this clause.
- 14.3 DXN must hold the Security Deposit as security for the payment of any sums due under this MCA. If the Customer fails to pay any amount due on the due date for payment, DXN may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.

- 14.4 If DXN deducts any monies from the Security Deposit under clause 14.3 the Customer must pay DXN on demand by way of additional security that amount to replace the amount of the Security Deposit used in accordance with clause 14.3.
- 14.5 DXN must return any part of the Security Deposit which is unused to the Customer on termination of this MCA.
- 14.6 DXN may conduct a credit check on the Customer prior to entering into any Service Schedule or Service Order with the Customer. The Customer authorises DXN to make all enquiries reasonably necessary using the Customer's personal information in DXN's possession which may include Confidential Information, to determine the Customer's creditworthiness including by conducting requests for information from banks, credit agencies and other financial institutions.

15 Limitation of Liability

- 15.1 Other than liability arising out of indemnities granted by a party in a Customer Contract to which this clause does not apply, each party's total cumulative liability, whether in contract or tort, negligence or otherwise, (a) in connection with any Service provided under an Service Order, will not exceed one (1) times the amount of fees paid to DXN under such Service Order; (b) in connection with any Services provided for more than 12 months, will not exceed one (1) times the amount of fees paid to DXN under such Service Order in the 12 month period immediately preceding the claim.
- 15.2 In no event will either party be liable for any consequential, indirect, exemplary, special, or incidental damages (including additional costs arising from delay or increased inefficiency, loss of contracts or loss of use), or any lost data, lost profits, lost revenue, loss of anticipated saving, loss of production, business interruption, or lost opportunity, arising from or relating to the MCA or any Service Order (including arising from negligence), regardless of whether the loss was within the contemplation of the parties at the time of entering into the Service Order or not.
- 15.3 Each party acknowledges that the above reflect the allocation of risk between the parties and that the other party would not enter into the Service Order without these limitations on that party's liability. In addition, Customer disclaims all liability of any kind of DXN's suppliers and related companies. These limitations shall apply even if any other remedy fails of its essential purpose.

16 Indemnities

- 16.1 Each party agrees to indemnify the other against all losses, claims, expenses, damages and legal costs against or incurred by DXN or the Customer (as applicable) to the extent arising directly from an officer, employee or contractor of the Customer or DXN, as the case may be acting unlawfully, deceitfully or being wilfully negligent.
- 16.2 The Customer agrees to indemnify DXN against all losses, claims, expenses, damages and legal costs against or incurred by DXN to the extent arising out of:
 - 16.2.1 Any personal injury or damage to property arising from any negligent or wilful act or omission of the Customer;
 - 16.2.2 Any misuse or wrongful disclosure by the Customer of DXN's or any third party's Confidential Information;
 - 16.2.3 Any breaches by the Customer of DXN's or any third party's Intellectual Property Rights;
 - 16.2.4 Any breach by the Customer of clause 16.3; and
 - 16.2.5 any claim:
 - a) by a Supplier or any third party which arises from or is connection with any act or omission of the Customer or any breach of any instruction given by DXN to the Customer or breach of the

- Customer Contract by the Customer; or
- b) arising from any breach of law, regulatory requirement or industry code by the Customer.
- 16.3 Subject to the Customer's rights in statute or the common law, the Customer must not make any claim against a Supplier in connection with this Customer Contract or the Services which would result in DXN becoming liable to that Supplier.
- 16.4 Subject to clause 22.1, DXN may set-off against any payments due to Customer, any amounts due from or payable by Customer under or in relation to:
- 16.4.1 this Customer Contract (including any clawbacks or any over-payments made by DXN to Customer); or
- 16.4.2 any other agreement or arrangement between Customer and DXN.
- 16.5 Any indemnity provided under this clause and relied on by a party being sued for loss or liability in connection with its obligations under this MCA will be reduced proportionally to the extent that the relying party's negligent act or omission or failure to comply with its obligations under this MCA caused or contributed to the claim for the loss or liability.

17 Remedies

- 17.1 If DXN supplies a Service not of a kind ordinarily acquired for personal, domestic or household use or consumption but costs no more than \$40,000 or any other amount prescribed by law, the Customer has rights under the Australian Consumer Law including consumer guarantees and remedies but:
- 17.1.1 In relation to goods, DXN's liability for failure to comply with a consumer guarantee is limited to, at DXN's option:
- Replacing the goods or supplying equivalent ones;
 - Repairing the goods;
 - Paying the cost of replacing the goods or of acquiring equivalent ones; or
 - Paying the cost of having the goods repaired; and
- 17.1.2 In relation to services, DXN's liability for failure to comply with a consumer guarantee is limited to, at DXN's option:
- Supplying the services again; or
 - Paying the cost of having the services supplied again.
- 17.2 In the event DXN fails to meet the applicable Service Levels in the Service Level Agreement, DXN will pay Rebates in accordance with the Service Level Agreement to the Customer. The parties agree that Rebates represent a reasonable and genuine pre-estimate of the anticipated or actual loss or damage which would be incurred by Customer as a result of a failure by DXN to meet the relevant Service Levels. The parties want to avoid the difficulties of proof of damages and agree that the Rebates are reasonable and are not a penalty. The Customer's sole remedy for DXN's failure to meet a service level is the service level rebates specified in the Service Level Agreement, and the Customer waives any right to any additional remedy.
- 17.3 Where the Customer elects for clause 17.1.2(b) to apply, the Customer must prior to the commencement of repairing, replacing or modifying the affected Date Centre Service:
- 17.3.1 submit a detailed scope of works to DXN for written approval;
- 17.3.2 submit a quote for the scope of works to DXN for written approval; and
- 17.3.3 use contractors approved by DXN in writing which will not be unreasonably withheld.
- 17.4 To continue to receive Services as provided by DXN, all Services must be properly contracted, and all Fees

paid on time. DXN is not obligated to continue providing Services if Fees have not been paid.

18 Force Majeure

- 18.1 Neither party shall be liable for any delays in performance of any of the obligations hereunder due to causes beyond its reasonable control including, without limitation, fire, strike, war, acts of terrorism, riots, acts of any civil or military authority, acts of God, computer viruses, internet failures, judicial action, unavailability or shortages of labour, materials or equipment, failure or delays in delivery by vendors or suppliers or delays in transportation (**Force Majeure Events**).
- 18.2 The Affected Party must as soon as practicable give the other party written notice of that Force Majeure Event.

Termination for Force Majeure Event

- 18.3 If the Force Majeure Event continues for more than thirty (30) consecutive days and while it continues, the non-Affected Party may, at its sole discretion, terminate the relevant Service Order by giving written notice to the Affected Party and all other parties (if any) and clause 13 applies.

19 Insurance

- 19.1 Customer agrees to take out and maintain valid and enforceable insurance policies relating to public liability insurance for not less than \$10 million per event and in aggregate.
- 19.2 Customer will provide DXN upon request, with certificates from Customer's insurers certifying that the Customer has insurance as required by this clause.
- 19.3 If Customer fails to effect and/or keep in force the insurance policies specified in this clause, DXN may affect and keep in force the insurance policies and the cost of the insurance will be immediately due and payable by Customer to DXN. We may deduct the cost of the insurance from any amounts payable to Customer.

20 Assignment

- 20.1 No Customer Contract nor any rights, duties, or obligations set forth in any Customer Contract, may be assigned, encumbered, mortgaged, assumed, or otherwise transferred by Customer, in whole or in part, whether directly or by operation of law, including by way of sale of assets, merger or consolidation, or a transaction that results in the equity owners of Customer before the transaction owning less than a majority of the outstanding equity of Customer following the transaction (which shall be considered an assignment hereunder), without the prior written consent of DXN, and any attempt to do so without the express prior written consent (which consent shall be in its sole discretion) shall be deemed a material breach of the Customer Contract(s) which is incapable of being remedied and shall automatically terminate all other rights granted to Customer thereunder. Subject to the foregoing, each Customer Contract will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

21 General

Compliance with Laws

- 21.1 Where DXN is providing a Service, which carries communication over a network unit, the Customer accepts that DXN will be required to monitor, record information in respect of or intercept, communications carried over the Service as required by an authorised government authority or otherwise required by law.

Governing Law and Venue

21.2 The Customer Contract and any claims related to them will be governed by the laws of jurisdiction of Western Australia and, regarding Intellectual Property Rights or confidentiality, by Australian Commonwealth laws; such as laws that apply to contracts between residents of that state performed entirely within such state. The United Nations Convention on Contracts for the International Sale of Goods does not apply to any Customer Contract. Any dispute action or dispute proceeding arising from or relating to any Customer Contract must be brought in Perth, Western Australia. In the event of a court action or civil proceeding arising from or relating to any Customer Contract each party irrevocably submits to the jurisdiction and venue of the courts of Perth, Western Australia as the venue for any such action or proceeding.

Waivers

21.3 All waivers must be in writing. No delay or failure in exercising any right, power or remedy under a Customer Contract shall operate as a waiver. Any waiver or failure to enforce any provision of any Customer Contract on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

Entire Agreement

21.4 This MCA and any relevant Service Schedule or Service Order shall jointly form the Customer Contract which is the complete agreement between the parties regarding subject matter of this MCA, the Service Schedules and the Service Order and replace any prior oral or written communications between the parties related to the Customer Contract.

Independent Contractor.

21.5 In all matters relating to any Customer Contract, DXN will act as an independent contractor. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party.

Severability

21.6 If any provision of any Customer Contract is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing,

Counterparts

21.7 This MCA and any Service Order may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

Press Releases

21.8 Neither party may issue press releases or make public statements or announcements regarding the other party, this MCA, any Service Order or Services without the other party's consent. Notwithstanding the foregoing, the Customer consents to being included in any listing of DXN's current Customer, as DXN may deem appropriate from time to time, on DXN's website and marketing materials. Further, during the term of this MCA or any Customer Contract, DXN may reasonably request the Customer's active participation and cooperation in ongoing promotional and marketing activity with respect to DXN Services including potentially assistance or approval of press releases regarding a Customer success story or within 90 days of a successful project Services go-live, Customer or Service case studies, Customer video and audio materials, Customer prospect references and potentially reference site visits and analyst references. DXN shall prepare all necessary promotional and marketing material and shall submit those releases to the Customer for approval and input prior to any release. Where Customer resources or site access is required DXN shall request such access with as much notice as possible and ensure that DXN employees comply with any reasonable policies, procedures and insurance requirements.

Contra Proferentum Rule

21.9 This MCA and any Service Order may not be construed adversely to a party because that party prepared it.

Non-solicitation.

21.10 During the term of each Customer Contract and for a period of 12 months thereafter, no party to the Customer Contract shall (without the prior written consent of the other party) solicit, endeavour to entice or offer to employ or engage (either directly or indirectly) any officer, employer or contractor of the other party who is involved in the provision, management or receipt of Services provided under, or relationship management in relation to, that Customer Contract. This shall not prevent any party from considering and accepting an application made by any such officer, employee or contractor in response to a recruitment advertisement published generally and not specifically directed at officers, employees or contractors of the other party.

Variation

21.11 Except where expressly provided for otherwise in the Customer Contract, any variation to this MCA or Service Schedule must be in writing.

22 Notices

22.1 All notices, consents, and approvals under any Customer Contract must be delivered in writing by courier or by certified or registered mail (postage prepaid and return recipient requested) to the other party at the address set forth in this clause 22.1, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving written notice of the new address to the other party.

DXN's Contact Person

Position	The Company Secretary
Email	legal@dxn.solutions
Phone	+61 8 9288 1870
Postal address	5 Parkview Drive, Sydney Olympic Park, 2137 NSW
Address for delivery by hand	5 Parkview Drive, Sydney Olympic Park, 2137 NSW