



Maintenance Terms and Conditions

Terms and Conditions

1. Customer's Responsibilities

1.1 The customer shall ensure that the environmental conditions at the site of the System comply with the requirements from time to time issued by DXP, the Network Operator and any other approved authority.

1.2 Ensure that DXP engineers have full, free and timely access to the System and log book.

1.3 Provide adequate working and storage space, and such other facilities as DXP authorised personnel may reasonably require, and observe any common law or statutory requirements relating to health and safety at work.

1.4 Maintain all records required by Telecommunications Service License (TSL) or Self-Provision License (SPL) as issued from time to time by the Department of Trade and Industry, and making such records available to DXP.

1.5 Comply with all statutory requirements concerning the use of the System.

1.6 Obtain and pay for all licenses necessary to operation of the System.

1.7 Prevent anyone other than DXP authorised personnel from altering, adjusting or otherwise interfering with the system or any equipment belonging to DXP without DXP's prior written consent.

1.8 Ensure that all drawings, sketches and information supplied to DXP upon which DXP shall rely are sufficiently accurate and factual for DXP's purposes.

1.9 Ensure that a complete customer extension record is kept at all times, a copy of which must always be available to DXP. These must be updated and maintained at all times, any moves or changes made by the customer/user must be recorded, any work resulting from errors in or the non availability of these records shall be chargeable at DXP's standard rates.

1.10 The customer shall be responsible for the provision of an adequate mains power supply at all times, DXP shall not accept any responsibility whatsoever for any fault or damage caused by failure or fluctuation of this power supply.

1.11 The customer shall maintain at all times the integrity of any data network that the system is connected to. Faults resulting from the failure or fluctuation in quality of any data network shall not be covered by this contract. Faults arising as a result of any such event shall be chargeable at DXP's standard rates.

1.10 Maintain all consents necessary for access, delivery, installation, siting and maintenance of Disaster Recovery equipment, if applicable, and to provide, without charge, power and other facilities reasonably required by DXP.

1.11 Ensure that the network connection point is undamaged and accessible to DXP and repair any damage preventing the connection of Disaster Recovery equipment if applicable.

1.12 Provide DXP with a documented shelf map and System software dump, if the Service includes Disaster Recovery "Like for Like" replacement, and advising DXP of any changes thereto.

1.13 The Customer hereby indemnifies and shall keep indemnified DXP against any claims, arising against DXP due to the Customer permitting the System to be altered, adjusted or interfered with by other than DXP authorized engineers, or due to DXP being unable to keep the System in good working order due to causes within the control of the Customer including the adequate training of staff or other contractors.

2. DXP's Warranty

2.1 DXP shall exercise all reasonable skill and care in the provision of the Service and shall comply with all regulatory

requirements of an Approved Maintainer of Call Routing Apparatus. The Service shall be provided by competent personnel in a professional manner in accordance with best industry practice.

3. Limitation of Liability

3.1 Save where expressly provided otherwise DXP aggregate liability for breach of its warranty during the entire terms of this Agreement in respect of the Service, and arising from any cause whatsoever, shall be limited to the greater of £5,000 or one year's Charge relating to that element of the Service at fault, applicable at the date the liability arises.

3.2 DXP's liability for direct damage to the property of the Customer arising from any cause whatsoever shall not exceed £1,000,000 in respect of one incident or in respect of any series of incidents arising from a common cause in a twelve month period.

3.3 Subject to sub-clause 3.4 DXP shall not be liable in contract, tort, delict or otherwise for loss (direct or indirect) of profits, business, anticipated savings, loss of data or software programs, or for any indirect or consequential loss arising from any cause whatsoever.

3.4 DXP does not exclude or restrict liability for death or personal injury due to its negligence or liability arising under Part 1 of the Consumer Protection Act 1987.

3.5 Each provision of this clause shall survive independently and DXP's entire liability under and in connection with this agreement is set out in this clause. All other terms implied by statute law, or custom are excluded.

3.6 DXP shall not be liable for the failure to provide the Service if the failure results from any "force majeure" event (whether happening in the United Kingdom or elsewhere), such as, but not limited to, Act of God, refusal of license or other Government act, fire, explosion, accident, lightning damage, electromagnetic interference, radio interference, industrial dispute, failure on the part of DXP's supplier/s, or any cause beyond DXP's reasonable control.

3.7 DXP shall not be liable for the failure to provide the Service due to any fault or outage that is caused by incorrect administration by the customer.

4. Charges, Adjustment and Payment

4.1 The Charge for the Service, exclusive of VAT and such other UK taxes as may be payable on the supply of equipment and services from time to time, is specified in Schedule 2 – Service and Charges. It is payable annually in advance and the time for payment shall be of the essence of the Agreement.

4.2 DXP may adjust the Charge subject to a reasonable period of written notice (currently 90 days) effective at any time following expiry of the first year of the Service. However, this shall not occur more frequently than once in any twelve month period. Adjustments shall not normally exceed the change in the Retail Price Index, all items during the twelve months preceding the date of such notice.

4.3 The Charge may be adjusted in the event that the class of Service provided for the System is changed by agreement, or any changes are made to the requirements of the Network Operator affecting the provision of the Service, or revised software installed in the System is no longer a current release, or the System is extended by the addition of further hardware or software. In any such event, the Charge may be amended immediately in accordance with DXP's then current charges.

4.4 Any additional charge, for example, as a result of work described in clause 5, shall be payable in accordance with the terms specified in the relevant DXP invoice.

4.5 Should any sum due for payment be in arrears for fifteen days or more, DXP shall be under no obligation to provide the Service, and any additional charges incurred as a result of the delay in carrying out the Service shall be paid by the Customer.

4.6 Any payment due to DXP under this Agreement which is fifteen days or more overdue shall bear interest on a day to day basis at the rate of 4% over the Base Lending Rate of the National Westminster Bank, from due date until the date payment is received, until and following any court judgement. Moneys received may be applied to DXP such interest prior to application against other moneys due from the Customer.

5. Costs Not Included In the Charge

5.1 DXP may make additional changes at its current rates for costs not included in the Charge, being these costs relating to:

5.1.1 equipment not listed at Schedule 3 – The System.

5.1.2 any failure or wiring connected to the Call Routing Apparatus (the work shall be undertaken at additional charge), plain ordinary telephones (POT), or headsets.

5.1.3 lightning damage and damage caused by electromagnetic interference.

5.1.4 accidental or deliberate damage, misuse, negligence or failure to observe DXP's recommendations or those of the Network Operator or other relevant authority; causes external to the System such as those resulting from any failure or fluctuation of the electricity supply or air conditioning; any defect or failure in the Public Telecommunications Network; any fault which is not the result of fair wear and tear.

5.1.5 moves and changes required by the Customer.

5.1.6 meeting a change in the requirements or practices of the Network Operator or other relevant authority.

5.1.7 replacement of consumable materials, including printer ribbons, paper and cassettes.

5.1.8 loss of Customer-generated software programmes.

5.1.9 responding to a fault report when the System proves not to be faulty, for example where no fault exists of the fault is with the Network or equipment maintained by others.

5.1.10 Maintenance Acceptance Tests (MAT) which DXP reserves the right to perform prior to accepting the System for maintenance, or Network Connection Procedures (NCP) requested by the Customer, or network operator's charges relating to Disaster Recovery equipment.

5.1.11 errors in information supplied by the Customer upon which DXP has placed reliance.

5.1.12 repair or replacement necessary to allow use of Disaster Recovery equipment.

5.1.13 faults existing at the time of Service commencement except where covered by DXP warranty.

5.1.14 repair or replacement of equipment relating to standby power supplies including rectifiers, batteries and Uninterruptible power supplies (UPS), such work to be undertaken at additional charges.

5.1.15 work covered by this Agreement and included within the Charges but taking longer or attracting additional costs as a result of any of the causes in sub-clauses 5.1.1 to 5.1.14 inclusive.

6. Terms of Agreement, Default and Termination

6.1 This agreement shall continue for the minimum term specified in Schedule 4, and shall renew automatically on an annual basis thereafter. Either party may terminate this Agreement on expiry of the minimum term of any subsequent full year of service, subject to at least 42 days written notice to the other party in either case.

6.2 If the customer seeks to terminate this Agreement other than in accordance with sub-clause 6.1 or other relevant clauses of this Agreement, and DXP accepts such termination, the Customer shall pay to DXP all payments then accrued due for the Service up to the date of termination, plus 75% of the Charge for the next year of the minimum term of the Agreement, plus 75% of the Charge for the next year of the minimum term of the Agreement, plus 25% of the Charge per annum for any remaining unexpired portion of the minimum term. This calculation shall be applied to an individual element of the Charge should the Customer wish to discontinue only part of parts of the Service, for example, by reducing the equipment covered. This sum shall be payable

as liquidated damages as an agreement estimate of DXP's probable loss.

6.3 If either party commits any breach of this Agreement and fails to remedy it promptly on receiving written notice from the other party or suffers distress of execution or commits an act of bankruptcy or goes into liquidation (except for amalgamation or reconstruction) or if it enters into an arrangement or composition with creditors or if a receiver or manager is appointed over any part of its business or it is unable to pay its debts or, in the case of a Partnership, any of the partners is declared bankrupt or is unable to pay his debts, it shall constitute a repudiation by that party of its obligations under this Agreement, and at any time thereafter the other party may, by written notice,, suspend performance of or terminate this Agreement.

6.4 If after seven years from the date on which the System was originally brought into service, DXP reasonably forms the opinion that the Service can no longer be provided economically, DXP shall notify the Customer of the options which it considers are available. Should DXP and the Customer fail to agree on a course of action, DXP shall be entitled to terminate the Agreement on 42 days written notice.

7. General Conditions

7.1 This agreement shall be governed by English Law and be subject to the jurisdiction of the English Courts.

7.2 If any provision of this Agreement is unenforceable, all other provisions of this Agreement shall remain in force.

7.3 This Agreement, together with any authorized variations attached hereto, comprises the entire agreement between the parties.

7.4 No amendments to this Agreement shall be effective or binding unless they are in writing and signed by a duly authorized representative of DXP.

7.5 Rights accrued at the date of any termination of this Agreement and rights intended by their nature to survive termination shall survive any such termination.

7.6 Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.

7.7 Clause headings shall not affect legal interpretation of this Agreement.

7.8 The Customer shall not assign license or sub-contract, its rights or obligations under this Agreement without the prior written consent of DXP. The Customer shall disclose any information relating to this Agreement without the express consent of the other party whether this Agreement continues in force or not.

7.9 DXP may at any time record all conversations place from or to the call dispatch and customer service centre.

7.10 For the duration of this Agreement and for one year following its termination, the customer shall not employ any DXP staff who have provided services to the Customer under this Agreement.

7.11 These Terms and Conditions shall prevail over any proposed by the Customer or implied by trade custom or practice.