



## DX MASTER SERVICES AGREEMENT

### SECTION A – MSA TERMS AND CONDITIONS

#### **1 ORDERING PROCESS**

- 1.1 The MSA governs the overall relationship of the Parties in relation to the Services provided by DX to the Customer, and sets out, amongst other things:
- the procedure for the Customer to request the provision of Services from DX under separate Orders; and
  - the terms and conditions applicable to each Order.
- 1.2 If the Customer requires DX to provide any Services at any time, the Customer will inform DX to that effect, and, provided that DX agrees (acting in its sole discretion) to provide those Services, the Parties will negotiate in good faith and will use reasonable endeavours to agree the provisions of the Customer Order in respect of those Services.
- 1.3 An Order shall be binding on the Parties upon the earlier of DX confirming acceptance of the applicable Customer Order or DX commencing performance of the Services to which that Order relates, whether or not the Customer Order has been signed by or on behalf of the Customer or DX.
- 1.4 Each Order which has been accepted pursuant to Clause 1.3 shall form a separate binding contract between the Parties and will incorporate, and be subject to: (i) the provisions contained in the applicable Customer Order; (ii) the General Terms and Conditions; (iii) any service specific terms and conditions set out in the Service Description; and (iv) any Special Terms and Conditions.
- 1.5 If there is conflict between any provisions of an Order, it shall be resolved by applying the following order of precedence (prevailing first):
- any Special Terms and Conditions;
  - the provisions contained in the applicable Customer Order;
  - any service specific terms and conditions set out in the Service Description; and then
  - the General Terms and Conditions.
- 1.6 DX shall not be bound by any oral or written instructions regarding the Services or the carriage of the Packages which are not contained in the Order.

#### **2 MSA TERM AND TERMINATION**

- 2.1 The MSA shall come into force on the first Order Start Date and shall continue unless and until terminated in accordance with Clause 2.2 or by Applicable Law.
- 2.2 Without affecting any of its rights or remedies, either Party may terminate the MSA:
- for any reason by giving not less than three (3) months' written notice to the other Party; or
  - with immediate effect by giving written notice to the other Party if:
    - the other Party commits a material breach of any term of the MSA or an Order which is incapable of remedy; or
    - the other Party commits a material breach of any term of the MSA or an Order which is capable of remedy and fails to remedy that breach within a period of forty five (45) days after being notified in writing to do so; or
    - the other Party suffers an Insolvency Event.
- 2.3 On termination of the MSA for whatever reason, each Order then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the applicable Order Term, unless terminated earlier in accordance with the terms of such Order.

#### **3 LIMITATION OF LIABILITY**

- 3.1 Nothing in the MSA shall limit or exclude a Party's liability for:
- death or personal injury caused by its negligence, or that of its employees, agents or contractors (as applicable); or
  - fraud or fraudulent misrepresentation; or

- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1893 as amended or by the provisions of the Sale of Goods and Supply of Services Act 1980; or
  - any other act or omission, liability for which may not be limited or excluded under the Applicable Law.
- 3.2 Subject to Clause 3.1, DX shall not have any liability to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the MSA, save as expressly set out in the Applicable Limitations.

### SECTION B – ORDER TERMS AND CONDITIONS

#### **4 ORDER TERM**

- 4.1 The Order shall commence on the applicable Order Start Date and shall continue, unless terminated in accordance with Clause 10 or by the Applicable Law, until the expiry of the applicable Minimum Order Term.
- 4.2 On expiry of the Minimum Order Term, the Order shall continue ("Renewal Order Term") unless terminated in accordance with Clause 10 or by the Applicable Law.

#### **5 PROVISION OF THE SERVICES**

- 5.1 From the Order Start Date and for the duration of the Order Term, DX shall supply the Services in accordance with the Order.
- 5.2 In performing the Services, DX shall:
- use reasonable care and skill appropriate to the industry in which DX operates;
  - use personnel who are suitably skilled and experienced to perform tasks assigned to them;
  - provide the Services in accordance with the Service Levels;
  - use its reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to DX in writing reasonably in advance, provided that DX shall not be liable under the Order if, as a result of such observation, DX would be in breach of the Applicable Law or any of its other obligations under the Order; and
  - return any Packages which cannot be delivered to the Customer at the Customer's expense.
- 5.3 Title to any property (including any sacks, labels, pallets, pouches, trays, printers or other IT equipment cages or boxes) issued to the Customer by DX for the purposes of the Services shall remain with DX at all times (excluding any items which have been paid for in full by the Customer). The Customer shall be responsible for such property whilst in its care or control and shall return such property to DX immediately upon demand in good condition (fair wear and tear excepted).
- 5.4 DX is not a common carrier and accepts the Packages for carriage only in accordance with the provisions of, and subject to, the Order. DX reserves the right to refuse at any time to carry any Package at its sole discretion.
- 5.5 If the Customer does not have the Package(s) ready for collection at the applicable Collection Time, DX shall not be required to wait for such Package for more than ten (10) minutes beyond that Collection Time. If the vehicle driver waits (at his absolute discretion) for more than ten (10) minutes after the applicable Collection Time or, if applicable, the Vehicle Departure Time, DX may charge the Customer a late collection fee for each such occasion and any applicable Service Levels will not apply to such collection.
- 5.6 DX shall only be deemed to have accepted custody of the Customer's Packages upon the first scanning of the barcode on the Package by DX or upon the signature of a manifest by an authorised representative of DX. DX shall not be required to check the contents of any sacks, crates or cages containing a Package(s) at the time of collection.

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DX Legal - Master Services Agreement August 2014

- 5.7 DX shall not be required to retain copies of any documents relating to the despatch or receipt of any Package for any longer than two (2) months following the date of delivery.
- 5.8 Non-Working Days are not included in the agreed delivery times (unless expressly agreed otherwise in writing by DX).
- 5.9 If DX would have performed the Services in accordance with the Order, but has failed to do so as a result of a Customer Cause:
- a) DX shall not be treated as being in breach of the Order to the extent that such non-performance of the Services is caused or contributed to by a Customer Cause and any applicable Service Levels shall not apply;
  - b) DX shall be entitled to the Amounts Due for the Services affected by the Customer Cause as if it had not occurred; and
  - c) DX shall be entitled to invoice, and the Customer shall pay such invoice in accordance with Clause 8, for any additional costs reasonably incurred by DX in performing (or re-performing) the Services affected by the Customer Cause, including any costs of re-delivering, storing or returning the Package(s) to the Customer.

## 6 PROHIBITED ARTICLES AND PACKAGING

- 6.1 If DX believes that the sending of any Package or its contents amounts to or may amount to a criminal offence it may pass such Package and/or its contents to the relevant authorities without notice to the Customer.
- 6.2 If DX believes that any Package sent by or on behalf of the Customer: (i) contains a Prohibited Article; (ii) does not comply with the Regulations; (iii) is incorrectly addressed; and/or (iv) does not comply with the Packaging Guidelines or the Order, DX may (acting in its sole discretion):
- a) open such Package for examination if it reasonably believes that it needs to do so to comply with its obligations under the Applicable Laws or to check that the Customer is complying with this Agreement;
  - b) refuse to handle such Package;
  - c) accept such Package for carriage on the basis that DX shall not be responsible in any way for any Losses howsoever caused or arising either to the Package (as the case may be) or to any person or property as a result of the carriage of that Package;
  - d) in the case of Clause 6.2(i) and/or Clause 6.2(ii), destroy or dispose of the Package as it sees fit; and/or
  - e) return such Package to the Customer (which may not be tracked).
- 6.3 In the event that either Clause 6.1 or Clause 6.2 apply:
- a) the Customer shall not be entitled to any refund of the Amounts Due or compensation for failure to deliver such Package to the intended recipient;
  - b) DX shall be under no liability to the Customer or any other person for loss or damage to such Package; and/or
  - c) DX shall be entitled to invoice, and the Customer shall pay such invoice in accordance with Clause 8, for any costs reasonably incurred by DX in connection with such Package, including as a result of the non-delivery, cost of disposal and/or return of the Package.

## 7 CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- a) co-operate with DX in all matters relating to the Services;
  - b) comply with all requirements for the delivery, despatch and receipt of the Package relevant to the Services as stated in the Order (including the Service Description);
  - c) procure that no Prohibited Article is sent using the Services;
  - d) procure that that all Packages are labeled and packed in accordance with the Packaging Guidelines and otherwise comply with the Regulations;
  - e) procure that all Packages comply with the relevant Weight/Size Limit;
  - f) procure that that each Package is ready for collection at the applicable Collection Time;
  - g) procure that all Packages are safely loaded by the Vehicle Departure Time (if applicable);
  - h) procure that the Packages sent comply with the Traffic Profile;
  - i) provide, or procure, access to all premises and other facilities as may be reasonably required by DX for the purposes of collecting and/or delivering any Package at the Collection Time or delivery times; and

- j) not refuse, and procure that any recipient of the Package shall not refuse, to accept delivery of a Package that is addressed to the Customer or that recipient.
- 7.2 Prior to or within thirty minutes of a collection, the Customer shall submit a compliant data file in the agreed format to DX or enter the required information into DX Despatch setting out the delivery addresses for the Packages collected from the Collection Points on that Working Day, failing which, DX will not be obliged to attempt a next day delivery, any applicable Service Levels will not apply to such collection and DX may charge the Customer for storage of the affected Packages and/or for manually processing such Packages.
- 7.3 The Customer warrants that:
- a) where the Customer is not the owner of the Package, it has the authority of all parties owning or having any legal interest in the same to use the Services for the despatch thereof;
  - b) the nature or contents of the Package will not cause DX or its employees, agents or contractors to break any of the Applicable Laws;
  - c) each Package has been adequately prepared, addressed, labelled and packaged for safe despatch through the Services to protect against the ordinary risks of transport (including, where appropriate, transport by air) and for safe handling, whether by manual or mechanical means (including any sortation process) by DX staff and its employees, agents and contractors; and
  - d) the Package does not contain any Prohibited Articles.
- 7.4 The Customer shall indemnify and keep indemnified DX against any Losses suffered or incurred by DX or any other member of the DX Group arising out of or in connection with:
- a) any latent or inherent defect or natural deterioration of the Package and/or any Package that is inherently dangerous, unstable or liable to cause any Losses;
  - b) any other damage caused by the substance, composition or nature of the Package or the method of packaging employed;
  - c) any breach by the Customer of any of the warranties in Clause 7.3; and
  - d) any third party claim arising directly or indirectly from the Customer's use of the Services save for claims for loss or damage for which DX is expressly liable under the Applicable Limitations.

## 8 CHARGES AND PAYMENT

- 8.1 DX may invoice the Customer weekly or monthly in arrears for the Amounts Due and the Customer shall pay such invoice by Direct Debit to the bank account nominated by DX within fourteen (14) days from the date of invoice ("**Standard Payment Terms**"). If the Parties agree payment terms which differ from the Standard Payment Terms the applicable Payment Surcharges will apply.
- 8.2 The Amounts Due are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer.
- 8.3 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- a) the Customer shall notify DX in writing within seven (7) days of receipt of the invoice giving all relevant details of the nature of such dispute, failing which, the Customer shall be deemed to have accepted the invoiced amount and payment must be made in accordance with Clause 8.1;
  - b) the Customer shall pay the balance of the invoice which is not in dispute by the relevant due date of that invoice; and
  - c) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within seven (7) days of such resolution.
- 8.4 Subject to Clause 8.3, the Customer agrees to pay the Amounts Due without set-off, deduction or counterclaim.
- 8.5 Subject to Clause 8.3, if the Customer fails to make any payment due to DX for any Services provided to the Customer by DX by the relevant due date of an invoice, DX may (acting in its sole discretion) exercise any one or more of the following rights:
- a) charge the Customer interest (both before and after any judgment) on all overdue amounts in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012 from such due date until payment is made in full;

- b) suspend any further Services under that Order and any other Orders until all outstanding amounts have been paid in full; and/or
  - c) exercise a general lien on all Packages carried for the Customer that are in DX's possession at that time and sell the contents of such Packages and retain the proceeds of sale in settlement of any outstanding amounts payable by the Customer (including amounts due for previously carried Packages or Services provided under any Order).
- 8.6 Subject to Clause 9, the Charges will be applicable for one year from the Order Start Date. Unless agreed otherwise in writing by the Parties, the Charges will automatically increase annually by the prevailing RPI with effect from the first anniversary of the Order Start Date and on each subsequent anniversary. For the avoidance of doubt, the Charges will remain the same and will not decrease if RPI is a negative figure.

## 9 ADDITIONAL CHARGES

- 9.1 The Customer agrees and acknowledges that the Charges and the Services have been based upon the Projected Use. DX will review the volumes despatched against the Projected Use every quarter and DX may (acting in its sole discretion) adjust the Charges if at any time the average actual usage of the Services by the Customer is less than ninety per cent (90%) of the Projected Use or more than 110% of the Projected Use in any quarter. The revised Charges will apply from the date of notification to the Customer and may be also be charged retrospectively. In the event that the Customer disputes the revised Charges, DX may suspend Services until such dispute is resolved.
- 9.2 If in any month during the Order Term the National Average Fuel Rate for diesel increases by one cent Euro (€0.01) per litre above the Base Fuel Price, DX may (acting in its sole discretion) increase the Charges by zero point one seven five percent (0.175%). DX shall advise of any change to the National Average Fuel Rate, via publishing on the DX website [www.thedx.ie](http://www.thedx.ie) (as may be updated by DX from time to time). For the avoidance of doubt, should the National Average Fuel Rate of diesel fall below the Base Fuel Price, the Charges shall not be adjusted. If the National Average Fuel Rate falls between two whole numbers, the percentage applied will be the lower of the two if the decimal point falls below 0.5c or higher of the two if the decimal point is 0.5c or above.
- 9.3 If any Packages are not despatched by the Customer using the correct electronic method of despatch made available by DX (such as DX Despatch), DX may apply a surcharge of €1.00 per Package for each time paperwork is submitted (for example, a manual paper waybill, despatch note, consignment note or collection manifest). DX may increase this surcharge at any time by giving one month's notice to the Customer.
- 9.4 If there is a material increase in the cost to DX of providing the Services under the Order which is beyond the reasonable control of DX, DX may (acting in its sole discretion) levy a surcharge for the additional costs reasonably and properly incurred by DX as a result.
- 9.5 If the Parties agree any customised procedures or processes (including a non-standard IT set up; bespoke invoicing and/or bespoke management information reports) then DX may (acting in its sole discretion) levy a surcharge for the additional costs incurred by DX in implementing such customised procedures or processes.
- 9.6 DX will apply a surcharge for Defined Locations as set out in the Customer Order. Service Levels do not apply to Defined Locations.
- 9.7 All Services may be subject to a Minimum Service Charge at each Collection Point.

## 10 ORDER TERMINATION

- 10.1 Each Party may terminate the Order with immediate effect by giving written notice to the other Party if:
- a) the other Party commits a material breach of any term of that Order which is incapable of remedy; or
  - b) the other Party commits a material breach of any term of that Order which is capable of remedy and fails to remedy that breach within a period of forty five (45) days after being notified in writing to do so, such notice must specifically refer to the threat of termination under this Clause; or
  - c) if the other Party suffers an Insolvency Event.

- 10.2 Without affecting any of its rights or remedies, either Party may terminate the Order for any reason by giving not less than the Minimum Notice to the other Party provided that such notice may not expire before the last day of the Minimum Order Term.
- 10.3 DX may terminate the Order with immediate effect:
- a) on the expiry of fourteen (14) days' written notice to the Customer if the Customer fails to pay any Amount Due by its due date; or
  - b) if DX terminates the MSA pursuant to Clause 2.2b);
  - c) if DX terminates any other Order with the Customer pursuant to Clause 10.1 or 10.3 a) of that Order;
  - d) if the Packages do not comply with the Traffic Profile; or
  - e) if the Customer does not agree to any changes notified by DX under Clause 14.1.
- 10.4 Termination of the Order shall not affect any other Order or the MSA, unless terminated in accordance with the terms of such Order(s) or the MSA (respectively).

## 11 LIMITATION OF LIABILITY

- 11.1 The Customer acknowledges that the value and contents of any Package and also the amount of Losses which may be suffered by the Customer if the Package is lost, stolen, damaged or delayed are only known to the Customer and that the amount of compensation payable by DX for any loss of or damage to a Package is limited to the amounts set out in the Applicable Limitations. In view of this, DX advises and the Customer agrees that it has been advised to maintain adequate insurance on an "all risks" basis in respect of any Package for its full value to the Customer. **The Customer further acknowledges that the Charges for the Services reflect the Applicable Limitations and that under the circumstances the Applicable Limitations are reasonable.**
- 11.2 DX shall only be liable to the Customer or any other person in connection with or arising out of the Order or the performance or non-performance of the relevant Services to the extent that the Losses suffered result solely from the negligence of, or breach of the Order by, DX or its employees, agents or contractors, in which case such liability shall be subject to the Applicable Limitations. All liability is subject to proof of custody of the Package by DX.
- 11.3 Subject to Clauses 11.2, 11.4, 11.5 and 11.7, DX's maximum liability for any Package or part thereof that has been lost, stolen or damaged whilst in the custody of DX shall be limited to the **lesser** of: (i) the actual Losses suffered by the Customer; or (ii) the reasonable cost of replacement or repair of such Package or part thereof (as evidenced by cost price invoices); or (iii) the Standard Compensation Limit for the relevant Service.
- 11.4 Subject to Clauses 11.2, 11.5, 11.6 and 11.7, DX's total aggregate liability in any Contract Year in respect of an Order (for the avoidance of doubt including under Clause 11.3 and in respect of all other claims or Losses, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Order) shall be limited to the **lesser** of €10,000 or the total Charges (excluding VAT) paid by the Customer for such Order in respect of that Contract Year.
- 11.5 Subject to Clause 11.7, DX shall not be liable to the Customer or any other person for any and all:
- a) indirect, special or consequential loss or damage (which shall be deemed to include, without limitation, any loss relating to delay); or
  - b) loss of profits, turnover, revenue, contracts, savings or anticipated savings or business opportunities, loss, damage or corruption to data or damage to goodwill or reputation (in each case whether direct or indirect); or
  - c) Losses caused by an interruption of any Services resulting from a Force Majeure Event;
  - d) loss or damage caused to a Package which cannot be shown to have occurred whilst such Package was within the care, custody and control of DX or its employees, agents or contractors;
  - e) damage caused to a Package unless such damage is evidenced by crushing, piercing, water damage, or other damage to, or deterioration of, the outer packaging of such Package which is apparent to the naked eye (and the Customer is required to retain the packaging to provide evidence of such damage and compliance with the Packaging Guidelines);
  - f) liability arising from or caused by a Customer Cause;

- g) claims which are not notified in writing to DX within the earlier of five (5) Working Days of the date on which the Customer knew or ought reasonably to have known of the circumstances giving rise to such claim and in any event within thirty (30) days of the date of despatch of the Package to which the claim relates or any claim notified to DX within these periods but where the Customer fails to return the DX claim form with fourteen (14) days of receipt; or
  - h) any Losses arising from a delivery where a person misrepresents his authority to accept the delivery of the Package or where DX is delivering the Package in accordance with instructions from or purporting to be from the Customer.
- 11.6 Notwithstanding any other provision of the Order, the Applicable Limitations shall apply regardless of whether the Customer notifies DX of the possibility of any greater Losses.
- 11.7 Nothing in the Order shall limit either Party's liability for:
- a) death or personal injury caused by its negligence, or that of its employees, agents or contractors (as applicable); or
  - b) fraud or fraudulent misrepresentation; or
  - c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1893 as amended or by the provisions of the Sale of Goods and Supply of Services Act 1980; or
  - d) any other act or omission, liability for which may not be excluded or limited under the Applicable Law.
- 11.8 DX may make such investigations as it deems necessary to satisfy itself of the validity of any claim and/or Losses and the Customer shall co-operate with such investigations, including by providing any information or documentary evidence (including proof of despatch, cost price invoices, estimates for repair, packaging or photographic evidence) about the Package reasonably requested by DX within twenty one (21) days of such request.
- 11.9 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by the Applicable Law, excluded by the Order.
- 11.10 The Parties expressly agree that if any provision of the Applicable Limitations is held to be invalid under the Applicable Law, it will be deemed omitted from the Applicable Limitations to that extent, and if any Party becomes liable for any Loss to which that limitation or provision applied, that Loss will be subject to the remaining Applicable Limitations.

## **SECTION C – MISCELLANEOUS TERMS AND CONDITIONS**

### **12 DATA PROTECTION**

- 12.1 In this Clause the following definitions apply:
- a) "**Personal Data**" means data subject to protection under the Data Protection Acts 1998 and 2003 (the "**Acts**");
  - b) the terms "**data controller**", "**data processor**", "**data subject**" and "**processing**" bear the respective meanings given them in the Acts;
  - c) "**Customer Personal Data**" means any Personal Data which is provided to DX by or on behalf of the Customer or which is collected by DX in the performance of the Services and in respect of which the Customer is the data controller.
- 12.2 The Customer acknowledges that DX will be acting as a data processor only in respect of any data processing activities which DX carries out under the MSA or any Order.
- 12.3 DX shall:
- a) only carry out processing of any Customer Personal Data in accordance with the MSA or any Order or the Customer's reasonable and lawful instructions; and
  - b) implement reasonable technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage.
- 12.4 DX shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests.
- 12.5 The Customer warrants that where Customer Personal Data has been provided by the Customer to DX, that any data subjects relating to such Customer Personal Data have given their valid consent to such transfer of their Personal Data and to the processing of their Personal Data by DX.

### **13 ANTI-BRIBERY**

- 13.1 Each Party shall:
- a) have and shall maintain in place throughout the term of the MSA and any Order its own policies and procedures to ensure compliance with the relevant requirements of the applicable

laws, statutes and regulations relating to anti-bribery and anti-corruption (including adequate procedures under the Prevention of Corruption Acts 1889 – 2010 and the Proceeds of Crime (Amendment) Act 2005 and will enforce them where appropriate; and

- b) promptly report to the other any request or demand for any undue financial or other advantage of any kind given or received in connection with the MSA or any Order.
- 13.2 Any breach of this Clause 13 shall be considered a material breach of the MSA and all Orders.

### **14 ALTERATIONS TO THE MSA AND/OR ANY ORDER**

- 14.1 The provisions of the MSA and/or any Order may be supplemented or amended by DX at the sole discretion of DX provided that any changes are notified to the Customer in writing not less than one (1) month before the changes are to take effect in which case the Customer shall be bound by the MSA and/or Order as so supplemented or amended unless the Customer gives a notice to DX objecting to the revised or supplemented terms and conditions within ten (10) days of receipt in which case the MSA and/or such Order shall continue to apply without variation until the Parties agree otherwise in writing. For the avoidance of doubt, this Clause does not apply where this Agreement expressly provides that a document or reference may be updated by DX from time to time.
- 14.2 Save as provided in Clause 14.1, the MSA and any Order may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties.

### **15 GENERAL**

- 15.1 Except as required by the Applicable Law or by any relevant regulatory or government authority, or to the extent that information has come into the public domain through no fault of the receiving Party, each Party shall treat as strictly confidential all secret and/or confidential information received or obtained by it as a result of entering into or performing the MSA or any Order belonging to the other Party.
- 15.2 Neither the MSA nor any Order shall constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the MSA or the Order. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 15.3 The MSA and/or any Order may be assigned or transferred (in whole or in part) by DX to any other member of the DX Group without the consent of the Customer. The Customer shall not be entitled to assign or transfer the benefit of the MSA and/or any Order in any manner save with the prior written consent of DX which shall not be unreasonably withheld.
- 15.4 DX shall be entitled to delegate or contract out the Services (or any part thereof) provided that DX shall (subject to any express provision to the contrary in the Service Description) remain liable in accordance with the terms set out herein. Without limiting the foregoing, DX reserves the right to arrange for the carriage of Packages by any route, and using any handling, storage and transportation methods whatsoever.
- 15.5 Neither Party shall be liable to the other as a result of any delay or failure to perform its obligations under the MSA or any Order (except any payment obligations) if and to the extent such delay or failure is caused by a Force Majeure Event. If such event or circumstances results in the Party failing to perform its obligations such Party shall resume performance of its obligations as soon as reasonably practicable after the cessation of the Force Majeure Event.
- 15.6 Any notice required or permitted to be given by either Party pursuant to the MSA or any Order shall be in writing (which, for the avoidance of doubt, does not include email or fax or similar) addressed to that other Party and sent to the other Party using a delivery service requiring a signature on behalf of the recipient, in the case of the Customer to the address specified on the Customer Order or its registered office or principal place of business and in the case of DX to the Regional Financial Controller, DX Network Services Ireland Limited, 36-37 North Park, North Road, Finglas, Dublin 11 (or such other address notified to the Customer in writing by DX) with a copy to the Customer's DX account manager. A notice will be deemed to be received on the Working Day it is



delivered (as evidenced by a signature on behalf of the recipient) or on the next Working Day if the time of delivery is after 16.30PM.

15.7 On termination of the MSA or any Order:

- a) the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of MSA or terminated Order which existed at or before the date of termination; and
- b) Clauses which expressly or by implication have effect after termination shall continue in full force and effect including Clause 2.3, 3, 5.3, 5.9, 7.4, 8.4, 8.5, 9, 11, 15.1, 15.2, 15.5, 15.7, 15.9, 15.10, 15.11, 15.12, 16 and 17.

15.8 The MSA and any Order may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same MSA and/or Order.

15.9 The MSA and each Order contains the whole agreement between the Parties in respect of subject matter stated within it and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into the MSA and/or any Order on the basis of any representation that is not expressly incorporated into the MSA and/or that Order. Nothing in this Clause 15.9 excludes liability for fraud.

15.10 No failure or delay by DX in exercising any right, power or privilege under the MSA and/or any Order shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

15.11 In the MSA and any Order, the following rules shall apply:

- a) references to Clauses and Sections are to clauses and sections of the MSA or Order (as the context requires);
- b) a reference to any other document in the MSA or Order (as the context requires) is a reference to that other document as amended, varied, novated or supplemented from time to time;
- c) words in the singular shall include the plural and vice versa;
- d) a reference to "holding company" or "subsidiary" shall mean as defined in section 155 of the Companies Acts 1963 - 2013;
- e) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- f) all references to time are to Dublin time; and
- g) any words following the words "include", "including" or "amongst other things" shall be interpreted without limitation to the generality of the preceding words.

15.12 The validity, construction and performance of the MSA and each Order shall be governed by the laws of the Republic of Ireland. Any dispute arising under or in connection with the MSA or any Order shall be subject to the exclusive jurisdiction of the courts of the Republic of Ireland to which the Parties irrevocably submit.

## 16 DISPUTE RESOLUTION

16.1 If any dispute arises in connection with the Agreement (other than in relation to non-payment where no dispute has been raised as to the amount due), directors or other senior representatives of the Parties with authority to settle the dispute will, within ten (10) Working Days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.

16.2 If the dispute is not resolved at that meeting, the Parties will consider settling the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than ten (10) Working Days after the date of the ADR notice.

16.3 Neither Party may commence any court proceedings until at least fourteen (14) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

16.4 In the absence of written agreement to the contrary, the Parties shall bear their own costs in relation to any mediation under this Clause.

## SECTION D – DEFINITIONS

### 17 DEFINITIONS

The following words and phrases shall, unless the context otherwise requires, have the following meanings:

17.1 "**Additional Amount(s)**" means, in respect of an Order, any amount due under that Order, other than the Charges (including any sums due under Clauses 5.9c), Clause 9 or the relevant Service Description and/or any interest on overdue amounts);

17.2 "**Amount(s) Due**" means the Charges and any Additional Amounts;

17.3 "**Applicable Law**" means the laws of the Republic of Ireland and the European Union which apply to the provision of the Services, including the Regulations;

17.4 "**Applicable Limitations**" means, in respect of an Order, the exclusions and limitations of DX's liability set out in Clause 11 and the Service Description which are applicable to that Order or, if any, on the Customer Order;

17.5 "**Bank Holidays**" means days which are public or bank holidays in the United Kingdom and/or the Republic of Ireland and/or the place of delivery;

17.6 "**Base Fuel Price**" the base fuel price specified in the applicable Customer Order (or if none is specified, the National Average Fuel Rate applicable at the applicable Order Start Date);

17.7 "**Charges**" means, in respect of an Order, the charges applicable to the Services as set out in the applicable Customer Order, as may be revised in accordance with Clause 8.6 and the terms of the Order, together with any applicable surcharges;

17.8 "**Collection Points**" means the collection points agreed between the Parties;

17.9 "**Collection Time**" means the time agreed between the Parties for the collection of Packages and set out in the Customer Order or, if no time is agreed, the time at which DX regularly collects the Packages from the Customer;

17.10 "**Contract Year**" means, in respect of an Order, a consecutive twelve (12) month period from the applicable Order Start Date;

17.11 "**Customer**" means the person, firm, body corporate, association or organisation stated to be the Customer on the Customer Order or if no person is stated, the person or entity to whom the Services are provided to by DX;

17.12 "**Customer Cause**" means any breach of the obligations of the Customer (including Clause 7) or any other default, act, omission, negligence or statement of the Customer, its employees, servants, agents or contractors in connection with or in relation to the subject-matter of the Order, including unreasonably delaying acceptance of the Order or instructing DX to hold a Package for collection or pending further instruction;

17.13 "**Customer Order(s)**" means an order for Services placed by the Customer and agreed by DX from time to time setting out, amongst other things, the Charges and the type of Services to be provided;

17.14 "**Defined Locations**" means the locations listed in the DX Defined Locations document attached to your Customer Order as updated by DX from time to time by publishing a revised list on [www.thedx.ie](http://www.thedx.ie);

17.15 "**DX**" means DX Network Services Ireland Limited, a company incorporated in the Republic of Ireland with company number 54066 whose registered office is at 36-37 North Park, North Road, Finglas, Dublin 11;

17.16 "**DX Courier Services**" means the services known as "DX Courier" or "DX Courier for Exchange" as more particularly described in the Service Description and the applicable Customer Order;

17.17 "**DX Despatch**" means the web-enabled software provided to the Customer by DX and used to notify DX of the delivery addresses of Packages to be collected and to label the Packages with a tracking number;

17.18 "**DX Group**" means DX (Group) plc (company number 08696699) or any of its subsidiaries and holding companies from time to time;

17.19 "**DX Secure Services**" means the services known as "DX Secure" as more particularly described in the Service Description and the applicable Customer Order;

17.20 "**Force Majeure Event**" means any event beyond the reasonable control of the Party or its employees, agents and contractors, including any act of God, severe weather, war invasion, civil commotion, riots, embargo, hostilities (whether war be declared or not), act of terrorism, seizure or forfeiture under legal process, traffic incident, road closures, epidemic, disease, accidents, act or

- order of any government public local or other authority, labour disputes of whatever nature, explosion or fire;
- 17.21 **"General Terms and Conditions"** means the provisions of Section B (Order Terms and Conditions), Section C (Miscellaneous Terms and Conditions) and Section D (Definitions), together with any documents referred to in those Sections;
- 17.22 **"Insolvency Event"** means the occurrence of any of the following events in respect of either Party: that Party becomes insolvent, or if an order is made or a resolution is passed for the winding up of that Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver or examiner is appointed in respect of the whole or any part of that Party's assets or business, or if that Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt;
- 17.23 **"Losses"** means any and all losses, claims, damages, fines, interest, penalties, costs, charges, expenses (including reasonable legal fees and disbursements) and other liabilities and **"Loss"** shall be construed accordingly;
- 17.24 **"Minimum Notice"** means:
- Three (3) months, in respect of an Order where the annual Charges payable or expected to be paid are less than €500,000; and
  - Six (6) months, in respect of an Order where the annual Charges payable or expected to be paid are equal to or more than €500,000.
- 17.25 **"Minimum Order Term"** means, in respect of an Order, the minimum term specified in the applicable Customer Order;
- 17.26 **"Minimum Service Charge"** means the minimum amount payable for DX to provide the Services at each Collection Point as set out in the Customer Order;
- 17.27 **"MSA"** means this master service agreement, consisting of the Sections and any documents referred to in them;
- 17.28 **"National Average Fuel Rate"** the Irish national average forecourt fuel price taken from a published third party monthly fuel report;
- 17.29 **"Order(s)"** means an individual agreement entered into between the Parties pursuant to Clause 1 for the provision of the Services and consisting of:
- the provisions contained in the applicable Customer Order;
  - the General Terms and Conditions (to the extent applicable to that Order);
  - the Service Description; and
  - any Special Terms and Conditions.
- 17.30 **"Order Start Date"** means for each Order, the earlier of the date that the Order becomes binding under Clause 1.3 or the date stated on the Order Form as the Order Start Date;
- 17.31 **"Order Term"** means, in respect of an Order, the Minimum Order Term together with any Renewal Order Term for that Order or, if no term is specified in the relevant Customer Order, until DX has ceased supplying the Services or the Order has been terminated;
- 17.32 **"Package(s)"** means, in respect of an Order, any item or items contained in one sealed envelope, parcel, package, pouch, box or container, as the case may be, identified by a single tracking number/barcode in the case of a tracked service or, in the case of an untracked service for delivery to one address and charged as one delivery by DX;
- 17.33 **"Packaging Guidelines"** means the DX packaging guidelines as set out on [www.thedx.ie](http://www.thedx.ie) (as may be updated by DX from time to time);
- 17.34 **"Parties"** means, collectively, the Customer and DX and **"Party"** means the Customer or DX, individually, as the context requires;
- 17.35 **"Payment Surcharge"** means:
- for payments made by EFT; a five percent (5%) surcharge;
  - for payments made by cheque (by prior written agreement only); a five percent (5%) surcharge; and
  - for payment terms agreed exceeding fourteen (14) days; a one percent (1%) surcharge for each period of 15 days (or part thereof) exceeding the initial fourteen (14) day period; on the Charges in each relevant invoice.
- 17.36 **"Prohibited Article"** means:
- any Package that is not packed or labeled in compliance with, or otherwise does not fully comply with, the Regulations, the provisions of the Order or the Packaging Guidelines, or that contains any substance or matter prohibited by the Regulations; or
  - any item which might or does cause any personal injury or physical damage to any person or property, or might otherwise be considered dangerous or hazardous; or
  - any of the following: antiques; asbestos; bank notes or any other financial instruments capable of conversion into cash by anyone other than the payee; bullion; cash; chemicals; cigarette lighters; compressed gases and aerosols; controlled drugs (this prohibition does not extend to drugs carried under an Order with a pharmaceutical Customer who is licensed in respect of such drugs); credit company sales vouchers; explosives; firearms, flammable items; human remains (in any form); lewd, obscene or pornographic items; living creatures; matches; organic peroxide; oxidising materials; paints, varnishes, enamels and similar substances; poisons; processed tobacco or tobacco products; radioactive material; unused units in franking machines; works of art; wines or spirits; (unless the carriage of such items is specifically agreed in writing and signed by an authorised representative of DX). DX may add or remove items from this definition from time to time by publishing the revised definition on the DX website [www.thedx.ie](http://www.thedx.ie);
- 17.37 **"Projected Use"** means the minimum level of use of the Services agreed by the Parties and set out in the Customer Order;
- 17.38 **"Regulations"** means the Safety, Health and Welfare at Work Act 2005, Health and Safety Regulations, Orders and Statutory Instruments issued thereunder and any international, European or other national laws or regulations or protocols which apply to the packaging, handling and carriage of goods including applicable regulations made by the Universal Postal Union, the International Civil Aviation Organisation and the International Air Transport Association;
- 17.39 **"Renewal Order Term"** has the meaning given to it in Clause 4.2;
- 17.40 **"RPI"** means the Retail Prices Index (All Items) as published by the Central Statistics Office and any index published to replace the same;
- 17.41 **"Section(s)"** means any or all (as the context requires) sections of the MSA including the terms and conditions set out therein, being Section A (MSA Terms and Conditions); Section B (Order Terms and Conditions); Section C (Miscellaneous Terms and Conditions) and Section D (Definitions);
- 17.42 **"SecureDX Services"** means the services known as "SecureDX" as more particularly described in the Service Description and the applicable Customer Order;
- 17.43 **"Service(s)"** means, in respect of an Order, the services to be provided by DX to the Customer as stated in the applicable Customer Order and as further detailed in the Service Description;
- 17.44 **"Service Description"** means the guide relating to the relevant Service (including any document referred to in it) which contains any specific terms and conditions applicable to the Services as may be updated by DX from time to time by publishing on [www.thedx.ie](http://www.thedx.ie);
- 17.45 **"Service Levels"** means the Service Level set out for the relevant Service in the Service Description or in the Customer Order;
- 17.46 **"Special Terms and Conditions"** means, in respect of an Order, any special terms and conditions which DX has agreed to, and which are stated in writing, in that Customer Order;
- 17.47 **"Standard Compensation Limit"** for DX Courier Services means:
- forty Euros (€40.00) per affected Package sent by a tracked service not requiring a signature;
  - sixty Euros (€60.00) per affected Package sent by a tracked service requiring a signature; and
  - the price paid for delivery of the Package per affected Package sent by an "untracked" service;
- 17.48 **"Standard Payment Terms"** has the meaning given in Clause 8.1;
- 17.49 **"Traffic Profile"** means the profile of Packages agreed with the Customer as set out in the Customer Order;
- 17.50 **"VAT"** means value added tax chargeable under the Value-Added Tax Consolidation Act 2010;
- 17.51 **"Vehicle Departure Time"** means the time stated for departure of the vehicle on the Customer Order (if any);
- 17.52 **"Weight/Size Limit"** means the weight and size limits set out for each Service set out in the Service Description, unless otherwise agreed in writing by the Parties; and
- 17.53 **"Working Day"** means any day from Monday to Friday (inclusive) between the hours of 09.00AM and 17.00PM, excluding any Bank Holiday.