

# DXN Distributorship Rules and Regulations

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## Distributorship Rules & Regulations

### **DEFINITION :**

For the purposes of the DXN Distributorship Rules and Regulations, unless the context otherwise requires or unless repugnant to or inconsistent with such context, the following words or expression shall have the following meanings:-

#### **“Distributor”**

shall mean for the purpose of the DXN Distributorship Rules and Regulations, a person who has applied under Clause 1 herein and whose application has been accepted by DXN;

#### **“DXN”**

shall mean DXN International ( Australia ) Pty Ltd;

#### **“EDC”**

shall mean “Executive Diamond Council”;

#### **“PV”**

shall mean “Point Value”;

#### **“PPV”**

shall mean “Personal Point Value”

#### **“Product” or “Products”**

shall mean products produced or which bears the DXN label

#### **“SCN”**

shall mean Show Cause Notice

#### **“Sponsor”**

shall mean an existing Distributor who introduces a new member to be a Distributor of DXN and whose name appears on the new member's Distributor Application Form as the Sponsor

#### **“SV”**

shall mean “Sales Value”

Unless the context otherwise requires or unless repugnant or inconsistent with such context, the following interpretations shall apply:-

- (a) references to clauses and subclauses are to be construed as references to clauses and subclauses of this DXN Distributorship Rules and Regulations;
- (b) references to DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan and any of its policies, federal or state legislations or provisions of such legislation shall include such provisions as modified, amended or re-enacted;
- (c) references to persons include any body corporate or partnership;
- (d) words denoting the masculine gender include the feminine and neuter genders and vice versa;
- (e) words denoting the singular number include the plural number and vice versa;
- (f) the headings to the clauses are for ease of reference only and shall not affect the interpretation of the DXN Distributorship Rules and Regulations; and
- (g) references to any party includes its successors in title and permitted assigns.

## Distributorship Rules & Regulations

### 1. Application for Distributorship

- 1.1 Only applicants aged 18 years and above may apply to become as a Distributor.
- 1.2 In order to become a Distributor of DXN, an applicant is required to complete and sign the Distributorship Application Form and shall irrevocably agree to abide by the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan and any of its policies including but not limited to any variation, amendment or modification. Any application for distributorship is subject to the approval of DXN. The completed form can be handed to the stockist, branch or the head-office where cash bill will be issued.
- 1.3 A Distributor is prohibited from submitting any false or inaccurate information to DXN. A Distributor shall inform DXN of any changes affecting the accuracy of the Distributor's details. DXN reserves the right to immediately terminate any distributorship in the event it determines that false or inaccurate information was provided by the said Distributor.

### 2. Status of Distributorship

- 2.1 Application can be submitted for the following status:

(a) Husband and wife are automatically deemed to be registered as Joint Distributors with a single distributorship code. If the husband or wife is found to have registered as a Distributor of DXN after the spouse has earlier been a Distributor of DXN, then the later registration of distributorship will be canceled and/or the whole group will be transferred to the spouse. However, in the event if a couple married after both of their joint dates, they are allowed to hold two separate distributorship codes.

(b) In the event where the law of the country recognizes polygamy, a husband with more than one legal wife can only elect ONE wife for the husband and wife partnership, subject to the appropriate local legislation. Subsequent wives who wish to be a Distributors MUST join as a SINGLE identity without the presence of spouse.

(c) A corporation cannot be accepted as a Distributor of DXN. Nevertheless, if a Distributor wishes to change his distributorship to a private company or a partnership, written approval from DXN shall be obtained. In the event DXN has approved the distributorship application by a corporation or private company or partnership, any change to the equity structure of the said corporation or private company or partnership must first obtain the approval of DXN. In the event DXN determines that false or inaccurate information was provided or any change to the equity structure has been done without the approval of DXN, DXN reserves the right to forthwith terminate the distributorship.

### 3. Conditional Life Distributorship

- 3.1 Distributorship with DXN is for a lifetime and no yearly renewal of distributorship is necessary **PROVIDED THAT** the Distributor is required to have at least one (1) personal purchase transaction with PV in each calendar year. Personal purchase transaction refers to purchase of DXN Products(s) with PV, regardless of amount, made in the Distributor's own name.
- 3.2 Failure to comply with the above requirement shall render the distributorship of the concerned to lapse on **31<sup>st</sup> December** of that calendar year without need of further notice. Any reinstatement may be done between 1<sup>st</sup> January until 31<sup>st</sup> March in the same calendar year of expiry in a single cash bill subject to the following:-

## **Distributorship Rules & Regulations**

- (a) the minimum monthly PPV required for bonus has been achieved by the Distributor; and
- (b) the reinstatement is approved by the EDC and by DXN

**3.3** For new distributorship joining between 1<sup>st</sup> October and 31<sup>st</sup> December, the expiry date shall be extended until 31<sup>st</sup> December of the following year.

**3.4** Distributor whose distributorship has lapsed may re-register as a new Distributor under the same or another Sponsor however; he will be considered and deemed as a new Distributor and therefore, not entitled to his former networks.

**3.5** The reinstatement would be effective upon due approval from DXN's management. In other words, the reinstatement would not be backdated. Purchases, if any, made after lapse of distributorship would be accumulated and encoded according to marketing plan in the month of reinstatement.

**3.6** A Distributor who fail to reinstate his distributorship within the above-said grace period may not be entitled to reinstate his former network upon their re-registration after the grace period.

**3.7** A Distributor's distributorship shall be terminated if he (or any one of the spouse / partner / party / member of the company including proxy) is directly or indirectly involved in any of the disciplinary cases such as:

- (a) sponsoring other Distributors in an improper / invalid manner;
- (b) involved in other direct sales companies or any company having direct competition with DXN;
- (c) in breach of DXN Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies;
- (d) conducting any activities that directly or indirectly will bring negative effects to DXN or affect DXN's goodwill;
- (e) selling or distributing other country's Products in another country which DXN's market has been established ;
- (f) delivering, distributing or selling DXN's Products of one country to another country (which DXN's market has been established) without written approval from DXN;
- (g) making false claims relating to the Product(s) or the DXN Marketing Plan.

### **4. Registration Fee**

The registration fee is to be determined by DXN which is subject to change at any point of time and shall take effect immediately upon the issuance of any official announcement or notice.

### **5. DXN Starter Kit**

Upon registration, distributors will be given a DXN Starter Kit. The Starter Kit, business materials or sales aids' price is set at cost: not a service or franchising fee, strictly to offset costs incurred by DXN in the production and distribution of the marketing tools and materials. No PV or SV shall be given and no commissions or bonuses shall be paid on the purchase of the starter kit or business materials or sales aid. The Distributor may purchase additional kits for resell to new recruits. The Starter Kit shall be sold at the price fixed by DXN and is strictly prohibited to be sold/resold for profit or mark-up.

### **6. Distributor's Purchase Order**

Products can be purchased by cash (or by any mode of payment so accepted by DXN) from DXN and valid stockists. Cash bill will be issued for each private purchase (Distributor). All purchases after the month end cannot be backdated from the date of purchase.

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### **7. Entitlement to Monthly Bonus**

**7.1** A Distributor is required to maintain a monthly PPV exclusively in one (1) country for bonus qualification and commissions overriding. Bonuses are paid according to DXN's Marketing Plan when and where a Distributor has maintained the required monthly PPV.

**7.2** In addition, DXN reserves the right to recoup any bonuses paid to any Distributors on Products or services under the following circumstances:

- (a) returned under DXN's refund policy or exceptions thereto established by an authorized stockists;
- (b) returned to an authorized stockists under any applicable law; or
- (c) stolen or obtained by fraudulent means.

### **8. Discrepancy in Monthly Bonus Statement**

DXN shall be informed in writing within thirty (30) days from the date of receipt of the monthly bonus statement of any discrepancy in the said statement after which at the end of the specified time period, all monthly bonus statement shall be deemed as final and conclusive and DXN shall not entertain any inquiry or complaint.

### **9. Suspension and Termination of Bonuses, Incentives and Benefits**

DXN reserves the full and absolute right, at any point of time, to withhold or suspend or terminate a Distributor's benefits including but not limited to bonuses, incentives, commissions, benefits, entitlements, etc., in the event:

- 9.1** A Distributor has been issued with a SCN for violating any provisions of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies; or
- 9.2** A Distributor who is currently in the process of due inquiry conducted by DXN for allegedly violating any provisions of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies; or
- 9.3** A Distributor who has been found liable by DXN for violating any provisions of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies; or
- 9.4** Pending the finalization of transfer of the distributorship to beneficiary; or
- 9.5** Any other causes/reasons deems necessary and fit by DXN.

### **10. Responsibilities of a Distributor**

**10.1** A Distributor is independent and is free to operate on his own. Therefore, a Distributor shall not claim or represent as an employee of or having employment relationship with DXN. A Distributor is strictly prohibited from representing himself as such. Disciplinary action shall be taken on those who have breached this regulation.

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- 10.2** A Distributor shall represent the Products, services, and opportunity of becoming a Distributor ethically and professionally.
- 10.3** No representation or sales offers may be made relating to Products and services, which are inaccurate as to price, grade, quality, and liability.
- 10.4** No unreasonable, misleading, or unrepresentative earnings claims may be made. No income guarantees of any kind shall be made.
- 10.5** A Distributor may not solicit or persuade any other Distributor to sell or purchase Products or services other than those offered by DXN. A Distributor agrees that a violation of this rules inflicts irreparable harm to DXN and agrees that injunctive relief is an appropriate remedy to prevent it.
- 10.6** A Distributor is responsible for his own business decisions and expenditures.
- 10.7** A Distributor shall obey and comply full with the DXN Distributorship Rules & Regulations, Code of Conduct, DXN Marketing Plan and any of its policies.
- 10.8** A Distributor is personally responsible and accountable for compliance with all applicable national, state, municipal and local laws and regulations.
- 10.9** A Distributor shall comply with all laws, regulations and codes of practice applying to the operation of his distributorship and shall not engage in any activity, which may bring disrepute to them or to DXN.
- 10.10** A Distributor shall not make any representation to a prospective recruit and/or customer, which cannot be verified, or make any promise which cannot be fulfilled. A Distributor shall not present any information to the customer/prospect in a false or deceptive manner.

### **11. Restriction/Right to Area**

- 11.1** A Distributor is not allowed to have any right or impose any restriction to a particular area and are strictly prohibited to declare that they have any specific right on a particular area.
- 11.2** A Distributor is strictly prohibited to distribute or sell any Products specifically manufactured for a particular country in any other country unless written approval from DXN.

### **12. Restriction on Products**

- 12.1** DXN's Products are strictly prohibited from being sold or exhibited in grocery shops, stores, mini-markets / supermarkets, military stores or trade fair.

### **13. Distributor Price**

- 13.1** DXN reserves the right , at any point of time to revise the Distributor Price including but not limited to PV and SV of the Product without any prior notice, and the revised Distributorship Price so determined or fixed shall immediate effect upon its official announcement

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### **14. Product Claims**

- 14.1** A Distributor shall not make any medical claim for any Product nor specifically prescribe any given Product as suitable for any ailment, as that type of representation implies the Products are drugs rather than cosmetics or nutritional. Under no circumstances should any Products be likened to drug Products prescribed for treatment of specific ailments.
- 14.2** A distributor shall be held liable and responsible for false claims of the Product, which shall lead to disciplinary, suspension or termination of distributorship.
- 14.3** While DXN makes every effort to achieve full compliance with complicated and periodically amended regulations, no Distributor should or attempt to state or intimate that any Product is approved by the Ministry of Health or any other governmental authority.

### **15. Improper Sponsoring of Distributor and Penalty**

#### **15.1 Improper sponsoring and its penalty**

Improper ways of sponsoring Distributors in the following context are prohibited:-

- (a) sponsoring a Distributor who is already a Distributor of another group;
- (b) sponsoring the spouse of a person who is already a Distributor of another group.

**15.2** The following actions will be taken if improper sponsoring is proven to have occurred:

- (a) distributorship shall be terminated with immediate effect. If the distributorship is terminated; all Distributors who were improperly sponsored will be transferred to their original Sponsors.
- (b) If the spouse (B) of a Distributor (A) is found to have become a Distributor of another group, B's Distributors will be terminated immediately and Distributors under B will be transferred to A's original Sponsors.
- (c) Penalty letters will be issued to all those who are involved.
- (d) No arrears of bonus will be considered.

#### **15.3 Proxy and its Penalty**

If a Distributor establishes a group not under his hierarchy but has self-interest in the development of the group, the Distributor is deemed to have been involved in this activity and his distributorship will be suspended or terminated and the group established by proxy will be transferred to the Sponsor.

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### 16. Involvement in other Direct Sales Company

- 16.1** A Distributor who has achieved the status of **Star Ruby and above** is not allowed to be involved directly or indirectly (including by proxy) in any activities of other direct sales companies or other activities that will bring negative effects to DXN. Any Distributor who commits such offence shall have his distributorship terminated immediately by DXN.
- 16.2** A Distributor shall not directly or indirectly and whether on his own behalf or with or for any other person solicit, promote or recruit any member of their downline organization to join or participate in any other direct selling or network marketing business or to distribute, sell or promote any Products or services competitive with DXN.

### 17. Breach of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan and Any of its Policies

- 17.1** If a Distributor breaches any provisions of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies, the Distributor's distributorship may be suspended or terminated immediately.
- 17.2** During the period of DXN's investigation or issuance of SCN or suspension notice for the alleged violation of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan and or any of its policies, the following shall be applied:
- (a)** DXN may provide verbal reprimand or issue a Warning Notice to the Distributor for the violation of the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies;
  - (b)** In the event of a SCN is issued to a Distributor, the Distributor shall within fourteen (14) days from the date of the same provide his written explanation relating to the allegations for consideration by DXN. DXN reserves the right to suspend the said Distributor from participating or carrying out activities which includes but not limited to placing orders, making sale or purchase, dealing with DXN's Products, dealing with networks, sponsoring, modifying Distributors information, attend training, participate in DXN's activities, participate in promotional activities or incentives campaigns, receiving bonuses, commissions or incentives until a final decision is made by DXN.
  - (c)** In the event of the Distributor fails to provide any written reply to the said SCN within the said period, DXN shall have the right to impose such punishment as it considers proper.
  - (d)** On the basis of any information obtained from collateral sources or from DXN's investigation of the statements and facts taken together with information submitted to DXN during the response period, DXN shall make a final decision regarding the appropriate remedy, which includes the termination of the Distributor's distributorship. DXN reserves the right to impose any remedies for similar violations of DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan or any of its policies on a case-by-case basis. DXN will notify the Distributor of its decision and all remedies will be effective forthwith as of the date on which notice of DXN's decision is served.
  - (e)** In the event of termination of the Distributor's distributorship, the Distributor's distributorship /status and all benefits pursuant to the DXN Marketing Plan including but not limited to benefits on promotion activities, incentives campaigns, entitlements shall be forfeited. Henceforth, the terminated Distributor is automatically prohibited from dealing in whatsoever manner with DXN's Products, networks and activities.
  - (f)** Any Distributor so terminated may apply for new distributorship from DXN after a period of six (6) months. However, acceptance of the application is subjected to the verification and approval by DXN.

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### **18. Beneficiary**

- 18.1** A Distributor may appoint any person of the same nationality as his beneficiary. If no beneficiary is named in the distributorship form, the beneficiary shall be the next of kin. However if there is a dispute relating to the beneficiary after the death of a Distributor, the appropriate court shall decide the beneficiary. DXN reserves the right to suspend any benefits including but not limited to bonuses and commissions until a final decision is made by the Court.
- 18.2** A Distributor shall not transfer, allocate, or otherwise transfer any right conveyed by under his distributorship to any person without the written approval from DXN. A Distributor may delegate his responsibilities but be and is ultimately responsible for insuring compliance with the applicable laws and regulations.

### **19. Properties of DXN**

- 19.1** DXN logos, trademarks, service marks, Product names, and other tangible or intangible commercial assets, registered or otherwise, videotapes, stationeries, printed materials, provided and related to DXN are the properties of DXN. Henceforth, they are not to be used, extracted or reproduced by any Distributor without prior written approval from DXN.
- 19.2** All promotional materials including but not limited to flyers, business cards, pamphlets, brochures, books prepared in accordance with the sub-clause below, may be distributed through personal contact only. They may not be posted in public places, mass mailed, put in mailboxes, or disseminated by any other non-personal contact means. Materials may not be disseminated through unsolicited faxed or E-mail message.

### **20. Distributor Agreement**

An Agreement between a Distributor and DXN takes effect as soon as the Distributorship is approved by DXN.

### **21. Transfer of Distributorship**

Transfer of distributorship is divided into two categories:

#### **21.1 DEATH**

If a Distributor passes away, the beneficiary will automatically take over the distributorship. If no beneficiary is named, the transfer of distributorship will be determined as per the law prevailing in the country. Simultaneously, DXN reserves the right to suspend any and all benefits including but not limited to bonuses, commissions until the issue is resolved.

#### **21.2 INDISPOSITION**

A Distributor who has reached the age of 65 years old or unable to continue the DXN business due to health complications which, if accepted by DXN shall be allowed to transfer the distributorship to anyone as he wishes or to his beneficiary.

### **22. Double Registration**

- 22.1** A married couple at the point of registration as DXN Distributor shall be given a common code, that means a single DXN distributorship entity, thus, at any one moment, a registered DXN Distributor with a married status is prohibited to apply or acquire an additional new distributorship under his own name or under his spouse name.

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- 22.2** In the event that a double registration has been detected and confirmed as such, DXN reserves the right and shall terminate the newer distributorship code with immediate effect without further reference or notice. Accordingly, DXN shall transfer all the newer distributorship code's down-lines and accumulated PVs to the old distributorship code.
- 22.3** Disciplinary action such as suspension or termination shall be initiated against any Distributor or Sponsor who directly, indirectly or accidentally found to be involved in double registration.

### **23. Request for Changing Sponsors**

- 23.1** Application for change of Sponsor is not allowed by DXN.
- 23.2** If a Distributor insists on changing his Sponsor, he can write to DXN to terminate his existing distributorship and wait for six (6) months before re-applying for distributorship under a new Sponsor.
- 23.3** For a Distributor whose distributorship has lapsed, a distributor may request to change his Sponsor by re-registering by following the procedure stated in Clause 3.
- 23.4** A Distributor shall not directly or indirectly encourage, persuade, involve or assist another Distributor to transfer to a different Sponsor. This includes the act of offering financial or other tangible or intangible incentives or benefits to induce the Distributor to terminate his existing distributorship and then re-register under a different sponsor. Any Distributor found liable to be involved in such practice may result in his distributorship to be suspended or terminated immediately.

### **24. Buy Back Policy**

- 24.1** DXN practices Buy Back Policy to ensure maximum satisfaction of its Distributors. This policy allows every Distributor to return unsold DXN Products in its original condition and of merchantable quality before the 20<sup>th</sup> of the month during which such purchase was made. Products in the "original condition and of merchantable quality" means the Products which are still in the market (the production has not yet stopped), with the price label still intact and clean, unopened box and in good condition. DXN reserves the right to reject any returned Product that does not meet such specification or condition. The Distributors must fill the Distributor Buy Back Forms in any of the DXN branches.
- 24.2** Distributors who wish to terminate their distributorship can return to any of the DXN branches all unsold DXN Products that are in the original condition and of merchantable quality.
- 24.3** DXN will deduct 85% on SV for all returned Products for bonus paid eighty percent (80%) and five percent (5%) handling fee.
- 24.4** Products returned should be accompanied with the following documents:
- (a) relevant cash bills/invoices (only original copy is considered valid);
  - (b) Distributor Card, which is still valid; and
  - (c) letter of termination of Distributor's right.

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**24.5** DXN will send the refund using crossed cheque after deducting the bonus paid, handling fee and whatsoever balance that is due. The cheque will be sent to the Distributor by registered mail or courier within thirty (30) days from the returned date.

**24.6** Distributors are advised not to over purchase. Purchase of Products should be made based on realistic estimation of the customer's orders.

### **24.7 Refund Policy**

**(a)** DXN will honor refund policies provided by any state or federal law applicable to consumers including when the product:

- (i) Has a serious fault that you couldn't see or weren't told about prior to purchase.
- (ii) Doesn't match the sample you were shown.
- (iii) Is different to how it was described.

**(b)** In the event that a customer requests for a refund, the distributor who sold the products should refund the purchase price and return the product or unused portion to DXN with a reasonable explanation within 14 days from date of purchase along with the customer's name, address and phone number. DXN will replace the products returned to the distributor.

### **25. Distributor Website Regulations**

**25.1** Any distributor who wish to establish link to DXN website or its subsidiary sites must submit application, stating its purposes and be approved by DXN prior to posting the link.

**25.2** No site references DXN, its Products or link to DXN website is permitted to make unsubstantiated income or Product claim.

**25.3** No site should make it appear that it is DXN subsidiary or that the site is in any way sanctioned or endorsed by DXN.

**25.4** All sited link to DXN must clearly state in a highly visible location that they are operated by independent distributor.

**25.5** The Distributor's website must not display DXN logo, trademark, or its Products. Any text related to or describing the link to DXN website must be in strict accordance with specifications approved by DXN.

**25.6** A distributor is fully responsible, accountable and liable for any misuse or misrepresentation of the website. Any violation of this clause and its subclauses thereto shall lead to disciplinary action such as suspension or termination of the distributor's distributorship.

### **26. Promotion Activities and Incentive Campaigns**

**26.1** Distributors shall abide with the respective rules and regulations governing all promotion activities and incentives campaigns.

**26.2** At any point of time of the promotion activities or incentive campaigns, if any Distributor is under investigation for disciplinary cases or has been or about to be issued a SCN for violation of DXN Distributorship Rules and Regulations DXN reserves the absolute right, at any point of time, to suspend or disqualify any Distributor from any and all promotion activities or incentive campaigns .

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### **27. Litigation and claims**

In the event any Distributor is charged with any infringement of any proprietary right of any 3<sup>rd</sup> party arising from any of DXN's proprietary assets, or if the Distributor becomes the subject of any claim or suit related to that Distributor's business-related conduct or any other action that directly or indirectly negatively affects or puts DXN, its reputations, or any of its tangible or intangible assets at risk, the affected Distributor shall immediately notify DXN. DXN may, at its own expenses and upon reasonable notice, take whatever action it deems necessary ( including, but not limited to, controlling any litigation or settlement discussion related thereto ) to protect itself, its reputations, and its tangible and intangible property. A Distributor shall take no action related to that claim and suit, unless obtained DXN's written consents.

### **28. General Business Ethics**

**28.1** DXN is a member of the Direct Selling Association (DSA) in Malaysia as well as in many countries around the world and abides by the DSA Code of Conduct. Along with the ethical guidelines of this section, Distributors are strongly encouraged to read the DSA Code of Conduct and adopt its principles in their business operations.

**28.2** A Distributor agrees that he shall not make any misleading, unfair, inaccurate, or disparaging comparisons, claims, representations, or statements about DXN, its Products, services, or commercial activities; other persons other companies (including competitors); their products; or their commercials activities.

**28.3** A Distributor agrees that any claims or representations concerning the opportunity must be congruent with, and limited to those found in the materials and literature currently distributed by DXN. Those claims and representations must also be advanced in accordance with any applicable laws, ordinances, and regulations, etc.

**28.4** No Distributor shall represent that, any person can or will receive profits or revenues without substantial effort on his own behalf.

**28.5** No Distributor shall make unreasonable, misleading, or unrepresentative representations respecting potential earnings.

### **29. Rights of DXN**

DXN reserves the full and absolute right, at any point of time, even without any prior notice to change, vary or amend or modify the DXN Distributorship Rules and Regulations, Code of Conduct, DXN Marketing Plan and any of its policies and to withdraw or suspend or terminate the distributorship of any Distributor or person as and when necessary.

### **30. English Version Shall Prevail**

In the event of doubt as to the true meaning concerning this DXN Distributorship Rules and Regulations, or any portion thereof in relation to its translated versions, the English version shall prevail.