

REFERRAL PARTNER AGREEMENT

This Referral Partner Agreement is an agency agreement concluded between:

HUGE	
Registered Company Name:	Huge Networks (Pty) Ltd
Company Registration Nr:	2014/009214/07
Physical Office Address:	234 Glover Avenue Block D Waterford Court Lyttelton Centurion
Postal Address:	Postnet Suite 125 Private Bag X1015 Lyttelton 0140
Primary Tel. Number:	
Fax Number:	
Email:	
For attention:	

Referral Partner	
Registered Company Name:	
Company Registration Nr:	
VAT Number:	
Physical Office Address:	
Postal Address:	
Primary Tel. Number:	
Fax Number:	
Email:	
For attention:	

1 INTERPRETATION

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears –

1.1. words importing –

- 1.1.1. any one gender include the other two genders;
- 1.1.2. the singular include the plural and *vice versa*; and
- 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

- 1.2.1. **"agreement"** means this agreement, the annexures hereto;
- 1.2.2. **"bad debt"** means any amount owing to HUGE by a customer of HUGE in respect of the products sold to such customer pursuant to this agreement and which has not been paid to HUGE within a period of 60 (sixty) days after the date upon which the amount has become due and payable by such customer to HUGE;
- 1.2.3. **"commencement date"** means the date of signature of this agreement by the last party signing hereto;
- 1.2.4. **"customer"** means any third party in the territory to whom one or more of products is sold as contemplated in this agreement through the instrumentality of the Referral Partner;
- 1.2.5. **"gross profit"** or means the revenue at the current HUGE list price less:
 - 1.2.5.1. all cost of sales items;
 - 1.2.5.2. any refunds given, credits and discounts passed, equipment or access link subsidisation or allowances made on each such product during the month in question; and
 - 1.2.5.3. any bad debts pertaining to each such product incurred by HUGE during the month in question;
 - 1.2.5.4. Value Added Tax; it being recorded and agreed, for the avoidance of doubt, that in determining monthly revenue generated pursuant to this agreement

for the purposes of calculating the "monthly profit" –

- (a) only revenue generated by HUGE directly from the sale of the products by the Referral Partner (in the form of usage charges, product purchase prices and monthly fixed annuity charges and the like) shall be taken into account;
 - (b) no revenue generated by HUGE from ancillary services provided by HUGE in respect of the products so sold such as set up or installation fees, service level agreement fees, maintenance or support fees, migration fees or training fees shall be taken into account;
- 1.2.6. **"network operator"** means any authorised supplier of telecommunication facilities and/or networks;
 - 1.2.7. **"products"** means the telecommunications products and services sold by HUGE or that of any other subsidiary or associated company of HUGE, as reflected in Annexure A hereto, together with any other products which may from time to time be agreed between the parties to fall within the ambit of this agreement (which agreement shall be evidenced by including those product/s in Annexure A hereto);
 - 1.2.8. **"subscription agreements"** means the agreements entered into between HUGE and the customers for the sale of the products that are either in the Initial Term as defined in the relevant subscriber agreement or has been renewed in writing, in both instances only as a result of the performance of the Referral Partner;
 - 1.2.9. **"territory"** means the Republic of South Africa;
- 1.3. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
 - 1.4. If any provision in a definition is a substantive provision conferring rights or imposing

obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

- 1.5. When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6. Expressions defined in this agreement shall bear the same meanings in schedules or Annexures to this agreement which do not themselves contain their own conflicting definitions;
- 1.7. Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.8. Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. The expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. Any reference in this agreement to a party shall, if such party is liquidated or sequestered, be applicable also to and binding upon that party's liquidator or trustee, as the case may be.

2 APPOINTMENT OF REFERRAL PARTNER

- 2.1. HUGE appoints the Referral Partner as a non-exclusive Referral Partner in the territory to sell the products and the Referral Partner accepts such appointment on the terms and conditions set out hereunder.
- 2.2. As from the Commencement Date, this agreement shall supersede any existing agency agreement.

3 DURATION

The appointment of the Referral Partner shall commence on the commencement date and shall continue indefinitely unless it is terminated:

- 3.1. in terms of clause 7, clause 10; or
- 3.2. by either party without cause by giving the

other 30 (thirty) days' written notice to that effect.

4 THE REFERRAL PARTNER'S DUTIES AND OBLIGATIONS

The Referral Partner shall:

4.1. Solicitation Of Orders For The Products

- 4.1.1. actively solicit potential purchasers for the products in the territory;
- 4.1.2. provide information relating to the products to potential customers in the territory;
- 4.1.3. deal with all enquiries from potential customers promptly;
- 4.1.4. ensure that when approaching potential customers, such customers are not already customers of HUGE as, unless otherwise agreed in writing by HUGE, no commissions shall be payable to the Referral Partner in respect of sales concluded by the Referral Partner pursuant to this agreement in respect of such customers;
- 4.1.5. obtain, during the course of discussions with the potential customer, such customer's relevant billing information, the format of which is as defined by HUGE from time to time, and identify potential savings which may be achieved by HUGE for such customers;
- 4.1.6. complete together with the potential customer, proposal documentation to forward to HUGE together with the potential customer's relevant billing, telecommunications infrastructure information, scoping documents and other relevant information;
- 4.1.7. perform, on behalf of HUGE, all obligations in relation to such potential customers as may be required of HUGE pursuant to the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002;
- 4.1.8. submit all proposals generated by HUGE to potential customers and actively negotiate with potential customers with a view to concluding subscription agreements;
- 4.1.9. submit to prospective customers only such contractual documentation as supplied to it by HUGE;
- 4.1.10. upon signature by a potential customer of contractual documentation, submit all such signed contractual documentation, including the completed scoping documents, or any other relevant document that is required as part of the contractual paperwork, to HUGE for approval, processing and implementation;
- 4.1.11. upon approval by HUGE of a customer

and signature by HUGE of the relevant contractual documentation, notify the customer of such approval and liaise between HUGE and the customer so as to ensure that the customer is kept fully appraised of the status of the installations in respect of the products;

- 4.1.12. ensure that in relation to the solicitation of orders for the products and the implementation of the sales in respect of the products, it shall act in accordance with all or any conditions which may be stipulated by any competent authority and in accordance with all laws, statutes, regulations and other legal enactments applicable to such sales from time to time;
- 4.1.13. without limiting the generality of clause 4.1.12 above, comply with the provisions of Annexure B hereto.

4.2. Generally

- 4.2.1. observe all directions and instructions given to it by HUGE in relation to its appointment in terms of this agreement and to the sale and implementation of the sales in respect of the products, including, without limitation, such rules and regulations as may be promulgated by the networks operator(s) from time to time;
- 4.2.2. at all times adhere to the service level directives;
- 4.2.3. act in all respects with due care and diligence and with good faith towards HUGE and promote and safeguard the interests of HUGE in regard to the product as if they were its own interests;
- 4.2.4. immediately disclose to HUGE all such facts and circumstances as the Referral Partner may suspect or might come to its notice which might affect the interests of HUGE in regard to the products or the customers;
- 4.2.5. not incur, save as expressly provided in this agreement, any liability on behalf of HUGE nor in any way pledge or purport to pledge the credit of HUGE nor accept any order nor make any contract binding upon HUGE;
- 4.2.6. save to give effect to this agreement, not hold itself out as the legal Referral Partner, representative or employee of HUGE;
- 4.2.7. not make any promises, representations, warranties or guarantees in regard to the products except as expressly authorised in writing by HUGE;
- 4.2.8. ensure that all its employees and representatives are properly trained, to the satisfaction of HUGE, in the marketing and selling of the products;
- 4.2.9. advise HUGE from time to time of direct

and indirect competition in respect of the sale of the products in the territory;

4.2.10. shall attend meetings and training programmes with HUGE, as and when required by HUGE, on dates to be specified by HUGE from time to time;

5 HUGE'S OBLIGATIONS

HUGE shall –

- 5.1. upon request therefor, supply the Referral Partner with all relevant information which is required by the Referral Partner to enable the Referral Partner to perform its obligation pursuant to this agreement;
- 5.2. at its cost provide the Referral Partner with any sales literature and technical and marketing information in regard to the product as HUGE considers is reasonably necessary to assist the Referral Partner to procure orders for the product;
- 5.3. provide reasonable assistance to the Referral Partner with negotiations for the sale of the products to existing or potential customers in the territory and when deemed appropriate by HUGE attend meetings for this purpose;
- 5.4. keep the Referral Partner advised in writing of all developments made from time to time in regard to the products;
- 5.5. make its production and other facilities available during normal business hours to any prospective customer for reasonable inspection;

6 COMMISSION

- 6.1. Subject to the Referral Partner completing sales of the products strictly in accordance with HUGE's business rules, HUGE shall pay to the Referral Partner commission equal to that percentage on the gross profit or the contract value, as specified in Annexure A.
- 6.2. Upon HUGE invoicing its customers for products sold by the Referral Partner pursuant to this agreement, HUGE shall furnish the Referral Partner with a commission schedule reflecting the commission payable by HUGE to the Referral Partner, which schedule shall, save in the case of manifest error, be final and binding on the parties. HUGE shall, upon request by the Referral Partner, make available to the Referral Partner such information which HUGE deems reasonably necessary to enable the Referral Partner to verify the commission.
- 6.3. The Referral Partner shall render a monthly invoice to HUGE for the commissions owing to it in terms of this agreement, together with the applicable VAT thereon, which commissions shall be paid by HUGE within 30 (thirty) days of the date of such invoice. Should the Referral Partner fail to render a monthly invoice to HUGE for the commissions so owing within 7 [seven] days after the end of each month, HUGE shall

not be obliged to pay the Referral Partner the commission owing for such month.

6.4. Should HUGE have –

6.4.1. for any reason whatsoever given any refund, passed any credit or made any allowance in respect of any product sold pursuant to this agreement; or

6.4.2. incurred any bad debt pertaining to any product sold pursuant to this agreement,

the foregoing shall, in accordance with the definition of “gross profit” in clause 1.2.5, reduce the monthly commission payable to Referral Partner pursuant to this agreement. To the extent that such monthly commission has not at the time of payment thereof to the Referral Partner been reduced accordingly, HUGE shall be entitled to require the Referral Partner to provide HUGE with a credit note in respect of such amounts that it is entitled to deduct from commissions payable.

6.5. Subject always to the provisions of clauses 6.6 to 6.8 (inclusive) and clause 7, the Referral Partner shall only be entitled to commissions payable in terms of this agreement for the duration of the initial subscription agreements concluded by the Referral Partner on behalf of HUGE. Should the Referral Partner facilitate the written extension or a renewal of a subscription agreement beyond the initial contract period thereof, the Referral Partner shall remain entitled to commission’s payable in terms of this agreement.

6.6. Should for any reason whatsoever or howsoever arising, a customer terminates its subscription agreement, the Referral Partner’s entitlement to commissions in terms of this agreement in respect of that subscription agreement shall forthwith terminate upon the date of such termination.

6.7. Should this agreement be terminated by:

6.7.1. HUGE in terms of clause 10; or

6.7.2. the Referral Partner for any reason whatsoever or howsoever arising, the Referral Partner will, with effect from 30 (thirty) days’ after such termination, automatically forfeit any claims for commission which may otherwise have accrued post cancellation of this agreement.

6.8. Should this agreement be terminated by HUGE on notice in terms of clause 3.2, the Referral Partner will be entitled to receive commission on all existing customers for the duration only of the initial contract periods, as defined in such customers’ subscription agreements. Upon the expiry of such initial contract periods, the Referral Partner’s entitlement to receive the commission’s payable in terms of this agreement shall immediately cease.

7 PERFORMANCE MEASUREMENT

7.1. The Referral Partner shall procure sufficient new business so as to ensure that it meets the targets (new revenue) as stipulated in the

attached Annexure and that its sales efforts during each year of this agreement result in at least a 10% increase each year in the monthly revenue (calculated on an annual basis reckoned from the commencement date) - or as otherwise set out in Annexure A.

7.2. Should for any reason whatsoever and howsoever arising –

7.2.1. the Referral Partner fail to comply with the provisions of clause 7.1, or

7.2.2. the gross revenue generated by HUGE from the sale of the products by the Referral Partner pursuant to this agreement decrease over any consecutive 6 (six) month period when compared with any previous consecutive 6 (six) month period,

and the Referral Partner fail to remedy either of the foregoing in relation to the product in question (“the defaulting product”) within thirty (30) days of receipt of written notice (“the default notice”) requiring it to do so, then the monthly commission payable by HUGE to the Referral Partner in respect of the defaulting product pursuant to this agreement shall be reduced by 25% for the first month reckoned from the date of receipt of the default notice, 50% for the second month reckoned from the date of receipt of the default notice and 75% for the third month reckoned from the date of receipt of the default notice that the Referral Partner remains in default in terms of this clause 7.2. Should the Referral Partner remain in default in terms of this clause 7.2 at the end of the third month reckoned from the date of receipt of the default notice, HUGE shall be entitled, without prejudice to any other remedy which is available to it at law or under this agreement, to cancel this agreement.

8 THE CUSTOMERS

All sales of the products effected pursuant to this agreement shall, for the avoidance of doubt, be regarded as sales directly between HUGE and the customer concerned and the Referral Partner shall not be entitled to receive for its own account any amounts payable by the customer arising from such sales.

9 ASSIGNMENT

The Referral Partner shall not be entitled to cede its rights or delegate its obligations hereunder to any third party. HUGE shall be entitled to cede its rights or delegate its obligations hereunder to any third party on written notice to the Referral Partner.

10 BREACH

10.1. If any party breaches any provision or term of this agreement and fails to remedy such breach within seven (7) days of receipt of written notice requiring it to do so (or in the time

and manner specified in any other clause that contains its own remedies for non-compliance with that specific clause), then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this agreement, including obtaining an interdict, to cancel this agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

- 10.2. HUGE shall be entitled to terminate this agreement immediately and without notice if –
- 10.2.1. the Referral Partner suffers a judgment which is not satisfied in full or appealed against (provided that such appeal is timeously and successfully prosecuted) or in respect of which an application to set it aside or rescind it is not made within 14 (fourteen) days after it becomes known to the Referral Partner;
 - 10.2.2. the Referral Partner commits any act of insolvency as contemplated in the Insolvency Act, 1936;
 - 10.2.3. the Referral Partner is placed in liquidation or under judicial management, whether provisionally or finally.

11 CONFIDENTIALITY AND RESTRAINT OF TRADE

- 11.1. It is agreed that in the course of his duties the Referral Partner-
- 11.1.1. has acquired and/or will acquire considerable know-how in and will learn of HUGE's techniques relating to HUGE's business;
 - 11.1.2. will have access to names of customers and suppliers with whom HUGE does business whether embodied in written form or otherwise;
 - 11.1.3. will have the opportunity of forging personal links with customers and suppliers of HUGE; and
 - 11.1.4. generally will have the opportunity of learning and acquiring the trade secrets, business connections and other confidential information pertaining to HUGE's business, all of which are collectively referred to in this agreement as "the trade secrets".
- 11.2. It is acknowledged that the only effective and reasonable manner in which HUGE's rights in respect of the trade secrets can be protected is the confidentiality obligations imposed upon the Referral Partner in terms of this clause 11.
- 11.3. The Referral Partner irrevocably and unconditionally undertakes in favour of HUGE that in order to protect the proprietary interests of HUGE in the trade secrets, it will not during the existence of this agreement or at any time thereafter either use or directly or indirectly divulge or disclose to others (except as required by the terms of this agreement) any of the trade secrets, and shall not, during the

existence of this agreement or at any time thereafter disclose to any third party any of the trade secrets.

- 11.4. The Referral Partner shall not for the duration of this agreement and for a period of 1 (one) year from its termination, whether as proprietor, partner, director, shareholder, member, agent, consultant, contractor, financier, representative, assistant, trustee or beneficiary of a trust or otherwise and whether for reward or not, directly or indirectly influence or otherwise try to persuade any customer of HUGE to purchase products from a competitor of HUGE or to cancel a subscription agreement.
- 11.5. The Parties agree that, whilst this agreement is in force, and for a period of 12 (twelve) months after the agreement has terminated, no Party shall entice an employee of the other to resign from its employment to join the workforce of such Party.
- 11.6. The Referral Partner acknowledges and agrees that the confidentiality and restraint obligations referred to above are reasonably required for the protection of HUGE and are generally fair and reasonable.

12 DOMICILIUM CITANDI ET EXECUTANDI

- 12.1. The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses on the cover page of this agreement.
- 12.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail.
- 12.3. Either party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs or its postal address or its telefax number or e-mail address, provided that the change shall become effective on the 5th business day from the deemed receipt of the notice by the other party.
- 12.4. Any notice to a party –
- 12.4.1. sent by prepaid registered post in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 125th business day after posting (unless the contrary is proved);
 - 12.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on

the day of delivery; or
 12.4.3. sent to its chosen telefax number or email address, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or

12.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

13 WHOLE AGREEMENT, NO AMENDMENT

13.1. This agreement constitutes the whole agreement between the parties relating to the

subject matter hereof and supersedes all previous agreements between the parties relating to the subject matter hereof.

13.2. No amendment or consensual cancellation of this agreement or any provision or term hereof.

13.3. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, shall operate as an estoppel against any party in respect of its rights under this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.

13.4. To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligised or not.

REFERRAL PARTNER:	
/s/:	(who warrants he is duly authorised thereto)
Name:	
Title:	
Date:	

HUGE:	
/s/:	(who warrants he is duly authorised thereto)
Name:	
Title:	
Date:	

ANNEXURE A TO REFERRAL PARTNER AGREEMENT

1 General

1.1. For the purpose of clause 1.2 below, tiers are determined as follows:

	Revenue from Equipment sales (excl. VAT) Per sale
Revenue from equipment sales – Tier 1	<100000
Revenue from equipment sales – Tier 2	=>100001
Revenue from equipment sales – Tier 3	=>200000

Tiers are calculated on a per sale basis and are not cumulative.

1.2. The Referral Partner will qualify to earn commission on all sales brought to HUGE as follows:

	Commission % of Revenue**	
	1st Contract Term	Renewal Contract Term
Revenue from recurring service charges	10%	10%
Revenue from access circuits	3%	3%
Revenue from VoIP services	8%	8%
	Commission % of Gross Profit	
Revenue from equipment sales – Tier 1	25%	n/a
Revenue from equipment sales – Tier 2	35%	n/a
Revenue from equipment sales – Tier 3	50%	n/a

1.3. Commission becomes due to the Referral Partner for:

1.3.1. each successive month that the customer is within a fixed term contract of at least 12 months; and

1.3.2. the customer account is current, with no arrears.

1.4. No commission will be payable where customers are on a month-to-month basis with HUGE or where customer accounts are in arrears.

1.5. ** - If a sale is done at less than HUGE list price, then the commission payable in terms of clause 1.2 below shall be amended pro-rata. For clarity, if a sale is done at 80% of list price, then the Referral Partner shall only be entitled to 80% of the commission.

REFERRAL PARTNER:
/s/: _____ (who warrants he is duly authorised thereto)
Name: _____
Title: _____
Date: _____

HUGE:
/s/: _____ (who warrants he is duly authorised thereto)
Name: _____
Title: _____
Date: _____

ANNEXURE B TO REFERRAL PARTNER AGREEMENT

1. Referral Partner and its employees, Referral Partners, consultants, contractors and subcontractors shall:

1.1. acquaint itself with and comply with all applicable law relating to:

- 1.1.1. the provision of electronic communications services, including, but not limited to, the Electronic Communications Act, all regulations applicable to ECNS or ECS licensees or license exempt persons, the Regulation of Interception of Communications and Related Matters Act, the Films and Publications Act and the Electronic Communications and Transactions Act;
- 1.1.2. consumer protection, including the Consumer Protection Act and the National Credit Act;
- 1.1.3. bribery and corruption, including but not limited to, the SA Prevention and Combating of Corrupt Practices Act 2004

collectively referred to as "**Applicable Law**".

1.2. not do or omit to do anything likely to cause HUGE to be in breach of any such Applicable Law;

1.3. allow HUGE, whether itself or through an Referral Partner, to conduct an audit of records and information held by Referral Partner or its sub-contractors or any other relevant person in relation to the performance by Referral Partner of its obligations under this Agreement;

1.4. if requested and at HUGE's reasonable cost, provide HUGE sufficient reasonable assistance to enable HUGE to perform any

actions required by any government or agency in any jurisdiction for the purpose of compliance with any Applicable Law or in connection with any investigation relating to the Applicable Law;

1.5. maintain adequate internal accounting controls and reasonably detailed books, records and accounts in respect of the supply of products or performance of services to HUGE;

1.6. in respect of this agreement, only be paid by HUGE by wire transfer or other traceable instrument to a bank account in Referral Partner's name;

1.7. promptly notify HUGE of any allegation of fraud, bribery or corrupt or unlawful practices made against Referral Partner in court, arbitration or administrative proceedings, or any investigation is commenced in respect of such allegations; at any time during the term of this Agreement;

1.8. ensure that any natural or legal person external to Referral Partner who is performing services in connection with this Agreement does so only on the basis of a written contract which secures from such persons terms equivalent to those imposed on Referral Partner in this clause. Referral Partner shall be responsible for the observance and performance by such persons of these terms, and shall be directly liable to HUGE for any breach.

2. If HUGE (acting in good faith) determines that there has been a breach by Referral Partner of this clause, such a breach shall be deemed a material breach of this Agreement, and HUGE shall have the right to immediately terminate this Agreement without prejudice to HUGE's rights under this Agreement or at law.

REFERRAL PARTNER:	
/s/: _____ (who warrants he is duly authorised thereto)	
Name: _____	
Title: _____	
Date: _____	

HUGE:	
/s/: _____ (who warrants he is duly authorised thereto)	
Name: _____	
Title: _____	
Date: _____	