



**HUGE TNS - MASTER SERVICES AGREEMENT**

MSANUMBER: \_\_\_\_\_

This Master Services Agreement between the Customer (as identified below) and HUGE TNS (Pty) Ltd (as identified below) is intended to facilitate the conclusion of individual contracts in the form of Customer Orders (as defined below) between HUGE and the Customer. Each Customer Order delivered and accepted in accordance with this Agreement forms an individual contract which incorporates the terms of this Master Services Agreement and establishes the terms and conditions under which HUGE shall provide the Services to the Customer.

<b>Parties</b>	
<b>HUGE</b>	<b>Customer</b>
<b>Registered Name:</b>	<b>Registered Name:</b>
HUGE TNS (Pty) Ltd	_____
<b>Physical Office Address:</b>	trading as: _____
5 MELLIS RD	<b>Physical Office Address:</b>
RIVONIA	_____
SANDTON	_____
<b>Registered No: 1993/003902/07</b>	_____
<b>Address for Legal Notices:</b>	<b>Registered No:</b> _____
As above, for the attention of	<b>Address for Legal Notices:</b>
the Chief Executive Officer	_____
<b>Fax Number:</b>	_____
<b>Email Address:</b>	_____
	<b>Fax Number:</b> _____
	<b>Email Address:</b> _____

## Terms and Conditions

### 1. Definitions and Interpretation

- 1.1. In this Agreement, the following terms and phrases shall have the following meaning, unless the context otherwise requires:
- 1.1.1. "**Agreement**" shall mean, as between HUGE and Customer, this Master Services Agreement read together with each relevant Customer Order and relevant Product Specific Terms as amended from time to time.
  - 1.1.2. "**Business Day**" shall mean, in respect of a Service, every day excluding Saturdays, Sundays and any national holidays.
  - 1.1.3. "**Charges**" shall mean Call Charges, Usage Charges, Installation Charge, Start Up Charge, Rental Charges, Monthly Fees and any other charges or fees payable by the Customer to HUGE in respect of a Service, as set out or referred to in a Customer Order and revised from time to time in accordance with Clause 4.3 and/or Clause 4.10.
    - 1.1.3.1. "**Call Charges**" shall mean the charges for circuit or packet switched telecommunications services payable in accordance with Clause 4.
    - 1.1.3.2. "**Installation Charge**" or "**Start Up Charge**" shall mean a non-recurring charge for installation of a Service (including installation of any Service Equipment) payable in accordance with Clause 4.
    - 1.1.3.3. "**Rental Charge**" or "**Monthly Fee**" shall mean monthly recurring charges for a Service payable in accordance with Clause 4.
    - 1.1.3.4. "**Usage Charges**" shall mean the usage-based charges for Internet Services payable in accordance with Clause 4.
  - 1.1.4. "**Confidential Information**" shall mean all information (in whatever format) which: (i) relates to the Agreement; (ii) is designated as confidential by either Party; or (iii) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how and personnel of either Party (including, in the case of the Customer, Customer Data) and which may reasonably be regarded as the confidential information of the disclosing Party.
  - 1.1.5. "**Customer Data**" shall include, but not be limited to, data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by HUGE and their respective agents in connection with the provision of Services.
  - 1.1.6. "**Customer Equipment**" shall mean hardware, software, systems, cabling and facilities provided by the Customer and used in conjunction with the Service Equipment in order to receive the Service.
  - 1.1.7. "**Customer Order**" shall mean a request for a specific Service delivered by the Customer to HUGE and accepted by HUGE in accordance with Clause 2.1 and 2.2.
  - 1.1.8. "**Customer Site**" shall mean a site or sites specified in a Customer Order at which a Service is to be provided.
  - 1.1.9. "**Emergency Works**" mean works, the execution of which, at the time it is proposed to execute them, is required to put an end to, or prevent, the arising of circumstances then existing or imminent that are likely to cause: (i) danger to persons or property; (ii) the interruption of any service provided by the Network or the network generated by a third party; (iii) substantial loss to HUGE or any third party; and such other works as in all the circumstances it is reasonable to execute with those works.
  - 1.1.10. "**Force Majeure Event**" shall mean any cause beyond a Party's reasonable control affecting the performance of its obligations, including, but not limited to, fire, flood, explosion, accident, war, acts of terrorism, power outages, strike, embargo, governmental requirement, civil or military authority, Act of God, changes to laws or regulations, inability to secure materials or services, industrial disputes and acts or omissions of other providers of telecommunications services.
  - 1.1.11. "**HUGE**" refers to Huge Telecom (Pty) Ltd trading as HUGE TNS
  - 1.1.12. "**Internet**" shall mean the international interconnected network of networks using the TCP/IP protocol to exchange data communications.
  - 1.1.13. "**Internet Service**" shall mean a service providing access to the Internet across the IP Network together with any related Service Equipment or support services, and as more particularly described in the relevant Customer Order.
  - 1.1.14. "**IP Network**" shall mean the points of presence, network hubs, and host computers owned, operated or used by HUGE in connection with the provision of an Internet Service.
  - 1.1.15. "**Network**" shall mean the Telecommunications Network and the IP Network.
  - 1.1.16. "**Party**" shall mean HUGE or the Customer (as the context requires), and "**Parties**" shall be construed accordingly.
  - 1.1.17. "**Product Specific Terms**" shall mean the terms and conditions dealing specifically with a particular Service category which is available on HUGE's website and which is incorporated by reference in a Customer Order;
  - 1.1.18. "**Ready for Service Notification**" means a notification (via sms, email etc), that may be provided in accordance with Clause 3.1 that, with respect to HUGE obligations hereunder, the Service is ready for use.
  - 1.1.19. "**Regulated Customer Data**" is that Customer Data of which the use, processing or transfer is regulated by law or regulation as "personal data" where HUGE or their respective agents come into possession of such Customer Data.
  - 1.1.20. "**Service**" shall mean the specific Telecommunications Service or Internet Service provided by HUGE to the Customer, and

as may be further described in the relevant Customer Order.

- 1.1.21. **"Service Activation Date"** shall mean, in relation to a Service, the date a Customer accepts or is deemed to accept a Service in accordance with Clause 3.2.
  - 1.1.22. **"Service Equipment"** shall mean the hardware, software, systems, cabling, and facilities provided by HUGE at the Customer Site in order to make available the Service to the Customer. Service Equipment shall not include the Network or any hardware or software which is the subject of a separate supply contract between HUGE and the Customer.
  - 1.1.23. **"Service Term"**, in relation to a Service, shall mean the total period for which the Service is provided pursuant to a Customer Order. The **"Initial Service Term"** shall mean the (initial) service term from the Service Activation Date as stated on the Customer Order or, if not stated, a minimum of one year from the Service Activation Date, unless the contrary is clearly indicated.
  - 1.1.24. **"Telecommunications Network"** shall mean the telecommunications system(s) that are owned, operated or used by HUGE from time to time.
  - 1.1.25. **"Telecommunications Service"** shall mean a service providing telephony services utilising the IP Network and/or the Telecommunications Network.
- 1.2. Unless the context otherwise requires, in this Agreement, a reference to:
    - 1.2.1. a person includes a reference to a body corporate, association or partnership;
    - 1.2.2. a person includes a reference to that person's legal personal representatives, successors and permitted assigns;
    - 1.2.3. any statute or statutory provision includes references to that statute or provision as amended, modified or re-enacted; and
    - 1.2.4. a document is a reference to that document as supplemented or varied from time to time.
  - 1.3. No provision of the Agreement is intended to contravene the applicable provisions of the Consumer Protection Act, and therefore all provisions of the Agreement to the extent that the Agreement or any goods and services provided under the Agreement documents are governed by the Consumer Protection Act of 2008, must be treated as qualified, to the extent necessary, to ensure that the applicable provisions of the Consumer Protection Act are complied with.

## 2. Service

- 2.1. The Customer may from time to time deliver to HUGE a Customer Order on the terms of this Master Services Agreement. A Customer Order shall be in such form as is provided to the Customer from time to time by HUGE and/or as HUGE may in its sole discretion accept.
- 2.2. A Customer Order shall be binding on both Parties only after it is accepted by both Parties in written form, and:
  - 2.2.1. **in the case of HUGE such acceptance to include the carrying out to HUGE'S satisfaction of appropriate credit checks against the Customer, to which the Customer hereby consents.**
  - 2.2.2. Each Customer Order issued and accepted pursuant to the terms of this Master Services Agreement shall create an individual contractual relationship between the Parties to provide and receive the Service for the Service Term. That contractual relationship shall be governed by this Master Services Agreement, together with the relevant Customer Order and any Product Specific Terms contained in such Customer Orders, to which terms the Parties to such Customer Order agree.
  - 2.2.3. In addition to Agreement terms, the Services shall be subject to all mandatory legal requirements in the jurisdiction where the Service is to be provided, including but not limited to the regulatory and data protection requirements.
  - 2.2.4. In the event of any conflict between the terms of the Customer Order, Product Specific Terms and the terms of this Master Services Agreement that cannot be reconciled, the order of precedence shall be as follows:
    - 2.2.4.1. Customer Order;
    - 2.2.4.2. Product Specific Terms;
    - 2.2.4.3. Master Services Agreement.
- 2.3. Without releasing it from any of its obligations, HUGE shall be entitled at any time, and without notice, to use subcontractors to perform some or all of such obligations.
- 2.4. The terms and conditions of this Master Service Agreement and the Charges for a Service provided hereunder are agreed expressly on the condition that the Customer shall not resell, charge, transfer or otherwise dispose of the Service (or any part thereof) to any third party.
- 2.5. HUGE reserves the right from time to time to change the configuration of the Network or the Service Equipment, or to change any applicable access code for receipt of a Service, provided always that such change does not materially affect the relevant Service. HUGE shall use reasonable endeavours to give the Customer a minimum of twenty-five (25) Business Days' notice of any such changes to access codes.

## 3. Service Activation

- 3.1. Prior to the provision of a Service, HUGE shall conduct such tests as it considers to be appropriate to determine that all necessary work has been done to provide the Service to the Customer and, upon successful completion of such tests, HUGE shall use reasonable endeavours to deliver a Ready for Service Notification to the Customer.
- 3.2. The Customer shall be deemed to have accepted the Service either (i) upon the date of delivery of the relevant Ready for Service Notification or, (ii), or where no Ready for Service Notification is received by the Customer, upon the date the Customer first uses the Service or (iii) upon Customer's signature of a job card or (iv) the Service Activation Date as set out in a Customer Order, whichever of these is earlier. Such date for a particular Service may be further described and defined in the relevant Customer Order.

#### 4. Charges and Payment terms

- 4.1. The Customer shall pay the Charges in accordance with this Clause 4.
- 4.2. Subject to the provisions of Clauses 4.3 and 4.10, the Charges shall not be increased during the Initial Service Term.
- 4.3. HUGE shall be entitled to amend Usage Charges and/or Rental Charges/Monthly Fees on thirty (30) Business Days' notice and, in the case of all Charges except Call Charges, such notice shall only take effect on or at any time after the expiry of the relevant Initial Service Term. For the avoidance of doubt HUGE will be entitled to amend Call Charges, at its discretion, at any time during the Service Term, Initial Service Term and / or renewal term.
- 4.4. Call Charges and/or Usage Charges shall accrue from the date on which the Customer commences use of the Service and may be invoiced by HUGE monthly in arrears.
- 4.5. Installation Charges and/or Start Up Charges shall accrue on the relevant Service Activation Date and may be invoiced by HUGE on or at any time thereafter.
- 4.6. Rental Charges and/or Monthly Fees shall accrue from the relevant Service Activation Date and may be invoiced by HUGE monthly in advance. Service provided for part of a month will be charged on a pro-rata basis.
- 4.7. Any invoice for Charges shall be due on issue of the invoice and shall be paid by the Customer within seven (7) days of the date of the invoice.
- 4.8. Interest shall accrue on any overdue invoice from the due date until payment (whether before or after judgement) at the maximum rate permissible to be charged under the provisions of the National Credit Act in relation to incidental credit.
- 4.9. All Charges or other sums which may from time to time be due, owing or incurred to HUGE are stated exclusive of value added tax and any similar sales tax, levy or duty which shall be payable by the Customer and invoiced by HUGE at the then prevailing rate where the Service is provided.
- 4.10. The Customer agrees to comply with any obligation as to minimum usage and/or minimum payment as may be set out in the relevant Customer Order, except to the extent that any non-compliance in this respect is the direct result of HUGE's negligence or breach of this Agreement. The Customer also agrees to comply with any Initial Service Term commitment. Any breach by the Customer of its obligations under this Clause 4.10 shall, in addition to constituting a material breach of this Agreement, entitle HUGE to:
  - 4.10.1. in the case of a minimum usage or payment commitment, increase to no more than the then prevailing HUGE base rate applicable to the actual usage of the Customer, the Charges for the relevant Service with effect from the commencement of the period to which the breach relates; or
  - 4.10.2. in the case of early termination of a Service (or part of a Service) any time from acceptance of a Customer Order by HUGE to the expiry of the Service Term, Initial Service Term or any renewal term, levy an early termination charge upon the Customer (which the Customer hereby acknowledges to be reasonable and a genuine pre-estimate of HUGE' loss) equal to: (i) 50% (fifty percent) of the remaining Rental Charges or Monthly Fees (not including any part relating to payment for local access circuits) payable by Customer for the unexpired portion of the Service Term, Initial Service Term or any renewal term; and (ii) any termination charges or other costs or expenses incurred by HUGE for the cancellation of the local access circuits or related services or equipment provided to HUGE in connection with the Service.

#### 5. Service Performance

- 5.1. In performing its obligations under this Agreement, HUGE shall at all times exercise the reasonable skill and care of a competent provider of Internet related services.
- 5.2. HUGE shall use reasonable endeavours to ensure that each Service will conform to any service descriptions and/or service levels as set out, or referred to, in the applicable Customer Order and/or any applicable ancillary service level agreement.
- 5.3. **Except as expressly set out in this Master Services Agreement, all warranties, representations or agreements, with respect to the provision of a Service or otherwise, whether oral or in writing and whether express or implied, either by operation of law, statute or otherwise, are excluded to the extent permitted by law.**

**The Customer's attention is drawn to the limitation of risk and liability of HUGE in terms of section 49(1) of the No. 68 of 2008 Consumer Protection Act. The Customer acknowledges and confirm that this specific clause of the agreement has been brought to the Customer's attention. Limitations and liabilities of this contract have been explained to the Customer.**

**Initial:** \_\_\_\_\_

## 6. Service Suspension

- 6.1. HUGE may, at its sole discretion and without prejudice to any right which it might have to terminate a Service and/or this Agreement, elect to immediately suspend the provision of a Service (or part thereof) in any of the following circumstances:
  - 6.1.1. HUGE has reasonable grounds to consider it is entitled to terminate the Service and/or this Agreement pursuant to Clause 7;
  - 6.1.2. HUGE is obliged to comply with an order, instruction or request of a court, government agency, emergency service organisation or other administrative or regulatory authority;
  - 6.1.3. HUGE needs to carry out Emergency Works to the Network or Service Equipment;
  - 6.1.4. HUGE has reasonable grounds to consider that the Service is being used fraudulently or illegally or in violation of Clause 8.5;
  - 6.1.5. HUGE has reasonable grounds to consider that the Customer will not or is unable to make any payment which is due or is to fall due to HUGE hereunder;
- 6.2. HUGE has reasonable grounds to consider that the Customer is or has been involved or connected with criminal activity or other activity, which is or may be detrimental to HUGE.
- 6.3. If HUGE exercises its right to suspend the Service (or part thereof) pursuant to Clauses 6.1.2 or 6.1.3 it shall, whenever reasonably practicable, give prior notice of such suspension to the Customer, such notice to state the grounds of such suspension and its expected duration. HUGE shall in such circumstances use all reasonable endeavours to resume the Service as soon as is practically possible.
- 6.4. If the Service (or part thereof) is suspended as a consequence of the breach, fault, act or omission of the Customer, the Customer shall pay to HUGE all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Service.
- 6.5. HUGE shall not be liable for any loss, damage or inconvenience suffered by the Customer as a result of any suspension made pursuant to Clause 6.1, except to the extent that such suspension is made pursuant to Clause 6.1.3 and for reasons which are solely and directly attributable to the negligence of HUGE.

## 7. Term and Termination

- 7.1. This Master Services Agreement shall take effect from the date signature date hereof, and in respect of each Service, the date the Customer Order is accepted by HUGE in accordance with Clause 2.2, or the date the Customer first uses a Service, whichever of these is earlier, and shall continue in force unless and until terminated in accordance with this Clause 7.
- 7.2. Either Party may terminate a Service:
  - 7.2.1. Subject to the provisions of a Customer Order, on at least 90 days written notice to take effect on or at any time after expiry of the relevant Initial Service Term;
  - 7.2.2. immediately by notice if, in relation to that Service, the other Party has committed a material breach which is incapable of remedy;
  - 7.2.3. immediately by notice if, in relation to that Service, the other Party has committed a material breach capable of remedy, but which it fails to remedy within ten (10) Business Days of having been notified of such breach; or
  - 7.2.4. immediately by notice if, in relation to that Service, a Force Majeure Event subsists for a continuous period exceeding three (3) months.
- 7.3. Either Party may terminate the Agreement immediately upon notice:
  - 7.3.1. in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is incapable of remedy;
  - 7.3.2. in the event of a material breach by the other, which has application to all Services then provided under this Agreement, and which is capable of remedy, but which such other fails to remedy within ten (10) Business Days of having been notified of such breach;
  - 7.3.3. if the other has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any analogous acts or proceedings under any foreign law;

- 7.3.4. in the event of a Force Majeure Event, which has application to all Services then provided hereunder, and which subsists for a continuous period exceeding three (3) months; or
- 7.3.5. where, after expiry of any applicable Initial Service Term(s), no Services have been provided under this Agreement for a continuous period exceeding three (3) months.
- 7.4. HUGE may terminate the Agreement (or a specific Service) immediately by notice if a suspension of a Service pursuant to Clauses 6.1.4, 6.1.5 or 6.1.6 has continued for a period of at least two (2) consecutive months.
- 7.5. If HUGE has reasonable grounds to consider that there has been a violation of Clause 8.6.2, HUGE may notify the Customer and require it to remedy the violation in the event of an incident involving a violation of public law or regulation or an imminent threat to the IP Network, immediately; or in all other cases, within forty-eight (48) hours. If the Customer fails to notify HUGE that such a remedy has been effected in accordance with this Clause 7.5 or if HUGE reasonably determines that the violation is continuing or is likely to occur again, HUGE may terminate this Agreement (or relevant Service) immediately upon notice to the Customer.
- 7.6. Notwithstanding the provisions of Clauses 7.2 and 7.3, HUGE may terminate the Agreement (or the relevant Service) on five (5) Business Days' notice if the Customer fails to make any payment, when due, in accordance with the terms of this Agreement.
- 7.7. Without prejudice to accrued rights or obligations, upon termination of the Agreement:
  - 7.7.1. all Customer Orders and accompanying Services shall terminate immediately;
  - 7.7.2. notwithstanding the provisions of Clause 4, all accrued Charges not yet invoiced shall become due and shall be paid by the Customer immediately on receipt of an invoice; and
  - 7.7.3. each Party shall promptly return to the other Party all copies of the other Party's Confidential Information and, if requested, verify to the other Party that it has done so.
- 7.8. If the Service is not terminated by either Party herein, it shall after the Initial Service Term automatically renew for a period of 12 months on the anniversary of the Service Activation Date.
- 7.9. Termination of this Agreement shall not affect clauses which necessarily or by their contexts requires survival of this Master Services Agreement.

## 8. Customer Obligations

- 8.1. The Customer shall grant or shall procure the grant to HUGE or its authorised representatives of such rights of access to each Customer Site, including any necessary licences, waivers or consents to enable it to perform its obligations or exercise its rights under this Agreement. The Customer shall advise HUGE in writing of all health and safety rules and regulations and any other reasonable security requirements applicable at the Customer Site, and HUGE shall use all reasonable endeavours to observe and ensure that its employees and authorised representatives observe such regulations and requirements as advised whilst at the Customer Site.
- 8.2. The Customer shall provide HUGE with such facilities and information as HUGE may reasonably require, to enable it to perform its obligations or exercise its rights under the Agreement.
- 8.3. The Customer warrants and undertakes that it shall:
  - 8.3.1. use the Service Equipment only for the purpose of receiving the Service and in accordance with HUGE'S reasonable instructions from time to time and/or any software licence that may be provided with the Service Equipment;
  - 8.3.2. not move, modify, relocate, or in any way interfere with the Service Equipment (or any words or labels on the Service Equipment) or the Network;
  - 8.3.3. not cause the Service Equipment to be repaired or serviced except by an authorised representative of HUGE;
  - 8.3.4. insure and keep insured all Service Equipment installed at each Customer Site against theft and damage;
  - 8.3.5. not create or allow any charges, liens, pledges or other encumbrances to be created over the Service Equipment. Title to the Service Equipment shall at all times belong and remain with HUGE, an HUGE affiliate or their subcontractors;
  - 8.3.6. permit HUGE to inspect, test, maintain and replace the Service Equipment at all reasonable times;
  - 8.3.7. comply with HUGE'S reasonable instructions in relation to the modification of the Customer Equipment to enable the Customer to receive the Service, at its own expense; and
  - 8.3.8. upon termination of a Service, allow HUGE access to each Customer Site to remove the Service Equipment. Should any construction or alteration to the Customer Site have occurred to facilitate any Service, HUGE is not obliged to restore the Customer Site to the same physical state as prior to Service delivery.
- 8.4. The Customer shall be liable for any and all damage to Service Equipment or the Network which is caused by (i) the act or omission of the Customer or the Customer's breach of the terms of this Agreement; or (ii) malfunction or failure of any equipment or facility provided by the Customer or its agents, employees, or suppliers, including but not limited to the Customer Equipment, nor shall HUGE be liable for any costs incurred by Customer arising out of any malfunction or failure of any such equipment or facility, including Customer Equipment.
- 8.5. The Customer warrants that it holds and shall continue to hold such licences and/or other authorisations as are required under any relevant legislation, regulation or administrative order, to receive the Services and to run and connect the Customer Equipment to the Network and Service Equipment. HUGE reserves the right to disconnect any Customer Equipment where the

Customer has failed to comply with the provisions of this Clause 8.5 and HUGE shall in no event be liable in respect of the Customer's failure to comply with this Clause 8.5.

- 8.6. The Customer warrants and undertakes that it shall in its use of the Services comply with:
  - 8.6.1. any relevant legislative and regulatory provisions and shall not use the Services for any illegal or immoral purpose; and
  - 8.6.2. the then current version of the HUGE Acceptable Use Policy (the "Policy"). The applicable Policy shall be available on the HUGE website. The Customer shall, prior to commencing its use of the Service(s), read and understand the Policy.
  - 8.6.3. HUGE reserves the right to change the Policy from time to time, effective upon posting of the revised Policy on its website and by notice to the Customer.
- 8.7. The Customer shall indemnify HUGE and HUGE Affiliates in respect of any and all losses, damages, costs or expenses resulting from or arising out of any breach of the warranties set out in this Clause 8 and/or any third party claim or allegation arising out of or relating to the use of the Service, and which relates to any act or omission of the Customer which is, or if substantiated would be, a breach of this Clause 8.

## 9. Liability

- 9.1. Subject to Clause 9.4 but otherwise notwithstanding anything else in this Agreement, each Party's total liability to the other in contract, delict or otherwise arising in connection with the Agreement, except in respect of any liability arising pursuant to the Customer's obligations set out in Clauses 4 and 8.3, 8.5 and 11, shall be limited to:
  - 9.1.1. For any event or series of connected events a value equal to six times the value of the average monthly billing of the affected Service(s); and
  - 9.1.2. notwithstanding Clause 9.1.1, a maximum amount in aggregate in any twelve (12) month period of twelve times the value of the average monthly billing of the affected Service(s). (The average being calculated using three months of billing prior to the aforementioned event or series of connected events)
- 9.2. For the avoidance of doubt, for the purposes of this Clause 9.1, the limits on liability expressed above are cumulative and apply across all Services.
- 9.3. Subject to Clause 9.4 but otherwise notwithstanding anything else in this Agreement, neither Party shall in any event be liable to the other for indirect or consequential losses or otherwise for harm to business, loss of revenues, loss of anticipated savings or lost profits, whether or not reasonably foreseeable at the time when the Agreement was entered into.
- 9.4. The Customer acknowledges that HUGE is unable to exercise editorial or other control over any content placed on or accessible through the Customer's use of the Services and HUGE shall have no liability as to the quality, content or accuracy of information received through or as a result of the use of the Services.
- 9.5. Nothing in this Agreement shall serve to limit either Party's liability in respect of death or personal injury caused by or arising from its negligence.

## 10. Force Majeure

Notwithstanding anything herein to the contrary, neither Party shall be liable to the other for any delay or failure in performance of any part of this Agreement (other than for payment obligations set out in Clause 4) to the extent such delay or failure is attributable to a Force Majeure Event. Subject to Clauses 7.2 and 7.3, any such delay or failure shall suspend the Agreement until the Force Majeure Event ceases and the affected Initial Service Term(s) shall be extended by the length of the suspension.

## 11. Intellectual Property, IP Addresses and Domain Names

- 11.1. The Customer acknowledges:
  - 11.1.1. that any and all patents, registered and unregistered designs, copyrights, trademarks and all other intellectual property rights whatsoever and where so ever enforceable, which are used in connection with the Service and/or Service Equipment, shall remain the sole property of HUGE or its contractors; and
  - 11.1.2. without limitation to the foregoing, that the Customer shall not be entitled to use the name, trademarks, trade names or other proprietary identifying marks or symbols of HUGE without HUGE'S prior written consent.
- 11.2. The Customer warrants that any domain name registered or administered on its behalf will not contravene the trademark or other intellectual property rights of any third party and that it shall comply with the rules and procedures of the applicable domain name authorities, registries and registrars. The Customer shall indemnify HUGE in respect of any and all losses, damages, costs and expenses arising from or in connection with breach of this Clause 11.2. The Customer irrevocably waives any claims against HUGE which may arise from the acts or omissions of domain name registries, registrars or other authorities.
- 11.3. Any Internet Protocol (IP) addresses assigned to the Customer by HUGE in connection with an Internet Service shall be used solely in connection with the Internet Service. If such Internet Service is discontinued for any reason

(including termination of the Agreement or the Internet Service), the Customer's right to use the IP addresses shall immediately cease and the IP addresses shall be returned immediately to HUGE.

11.4. If the Customer does not move the domain name(s) registered by HUGE to another Internet provider within one month after termination of the Agreement and/or the Internet Service, HUGE reserves the right to terminate the domain name(s) registered by HUGE for the Customer with the applicable domain name authorities, registries and registrars.

## 12. Confidentiality

12.1. Subject to Clause 12.2, each Party hereunder, shall:

12.1.1. only use Confidential Information for the purposes of the Agreement;

12.1.2. only disclose Confidential Information to a third party with the prior written consent of the other Party (except that either Party may disclose Confidential Information to its employees, agents or contractors, including professional advisors or auditors; and

12.1.3. ensure that any third party to whom Confidential Information is disclosed executes a confidentiality undertaking substantially similar to the terms of this Clause 12.

12.2. The provisions of Clause 12.1 shall not apply to any Confidential Information which: (i) is in or comes into the public domain other than by breach of this Clause 12; or (ii) is or has been independently generated by the recipient Party; or (iii) is properly disclosed pursuant to a separate written consent or a statutory obligation, the order of a court of competent jurisdiction or the requirement of a competent regulatory body.

## 13. Assignment

Neither Party may assign, charge, transfer or otherwise dispose of the Master Services Agreement, any Customer Order, or any rights or obligations therein in whole or in part, without the written consent of the other Party (which consent shall not be unreasonably withheld or unduly delayed), except that HUGE may assign any and all of its rights and obligations hereunder: (i) to any HUGE affiliate; (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of HUGE or an HUGE affiliate; or (iii) to a third party pursuant to any financing, merger, or reorganisation of HUGE..

## 14. General

14.1. **Severability.** If any provision of the Agreement, including any limitation, is held by a court or any governmental agency or authority to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain legal, valid, and enforceable.

14.2. **No Waiver.** Failure or delay by either Party to exercise or enforce any right or benefit conferred by the Agreement, including HUGE'S right to deliver invoices in accordance with Clause 4, shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.

14.3. **Relationship.** Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute or be deemed to constitute between the Parties a partnership, agency, association, joint venture or other co-operative entity.

14.4. **Third Party Beneficiaries.** Except as otherwise contemplated by this Agreement, nothing herein will create or confer any rights or other benefits in favour of any person other than the Parties.

14.5. **Variation.** This Agreement (or any part thereof) shall be modified only by the written agreement of the Parties.

## 15. Notices

15.1. Except as otherwise expressly provided for herein, any notice required or authorised to be given under the Agreement shall be delivered by hand, prepaid registered post, by facsimile transmission or by email to the address stated on the first page of this Master Services Agreement and shall be deemed to have been served (unless the contrary is proven):

15.1.1. If delivered by hand, on the next Business Day;

15.1.2. If sent by registered post, 10 Business Days after such posting;

15.1.3. If sent by facsimile transmission, the next Business Day;

15.1.4. If sent by email and the message is not returned, the next Business Day.

15.2. Notwithstanding the provisions of this clause, any legal notice that has been sent or transmitted and that have been received by the other party shall be deemed to have been delivered in accordance with the terms of this Agreement.

## 16. Entire Agreement

The Agreement (being this Master Services Agreement, all terms under active Customer Orders and Product Specific Terms) sets



out the entire agreement between HUGE and the Customer, superseding all prior or contemporaneous representations, agreements or understandings concerning the subject matter addressed herein.

**17. Dispute Resolution**

- 17.1. In the event of a dispute concerning this Agreement, each Party shall in the first instance promptly bring the dispute to the attention of a Director or similar person in a management position.
- 17.2. If the Customer wishes to dispute any invoice or part of an invoice falling due in accordance with Clause 4.7, the Customer shall, before the invoice is due, deliver a notice in writing to HUGE setting out the nature of its dispute, including: (i) date and number of disputed invoice; (ii) amount in dispute; (iii) reason for dispute; and (iv) supporting documentation, as appropriate. Any undisputed part of a disputed invoice shall be paid by the Customer in accordance with Clause 4.7.
- 17.3. The Parties shall use all reasonable endeavours to resolve such payment disputes as soon as is reasonably practicable.

**18. Customer Data and Privacy**

- 18.1. The Customer acknowledges that HUGE and its respective contractors will, by virtue of the provision of Services, come into possession of Customer Data.
- 18.2. HUGE has implemented and maintains appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing. The Customer acknowledges that it has right to access Regulated Customer Data upon written notice and have any agreed errors in such Regulated Customer Data rectified.
- 18.3. The Customer acknowledges and agrees that HUGE and its respective subcontractors may use or process Customer Data:
  - 18.3.1. in connection with the provision of Services;
  - 18.3.2. to incorporate Customer Data into databases controlled by HUGE for the purpose of administration, provisioning, billing and reconciliation, verification of Customer identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis, and
  - 18.3.3. to communicate to the Customer by voice, letter, fax or email regarding products and services of HUGE.
  - 18.3.4. The Customer may withdraw consent for such use, processing or transfer of Customer Data as set out above by sending a written notice to HUGE to such effect, unless it is required to (i) provision, manage, account and bill for the Services; (ii) carry out fraud detection; or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order.
- 18.4. The Customer warrants that it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of Customer Data as described in this Clause 18.

**19. Governing Law and Jurisdiction**

This Agreement shall be governed and construed in accordance with South African law, and the Parties hereto irrevocably agree to the exclusive jurisdiction of the South African courts.

**Executed as an agreement by the Customer and HUGE, intending hereby to be legally bound, by their authorised officers, on the date written here.**

<b>Huge</b>	
Signature:	
Name:	
Position:	
Date:	

<b>Customer</b>	
Signature:	
Name:	
Position:	
Date:	