

BIGHAND LIMITED

BIGHAND REFERRAL AGREEMENT – WEBSITE TERMS & CONDITIONS

This Agreement is made on the date a Referral is made by the Agent ("Effective Date") between:

BigHand Limited (company registration number 3128724) whose registered office is at 27 Union Street, London, SE1 1SD ("**BigHand**") and;

The organisation which makes a Referral ("**the Agent**").

BigHand wishes to appoint the Agent to act as its agent, and the Agent is willing to accept the appointment, all subject to the provisions of this Agreement.

Now it is agreed as follows:

1. DEFINITIONS

In this Agreement, the following words shall have the following meanings:

"Authorised BigHand Employee": means such persons specified at Schedule 1 clause 4.

"Credit Notes": means the Credit Notes issuable by BigHand to the Agent pursuant to clause 6.1 of this Agreement and at the value of which is specified at Schedule 1.

"Customer": means any person or company who purchases any of the Products directly from BigHand within 6 Months of BigHand receiving a Referral exclusively from the Agent.

"Month": means a period of 30 days.

"Products": means such products as BigHand has notified to the Agent and has provided details of (such as marketing materials) and which the Agent has agreed to act as an agent. The initial set of Products is attached to this Agreement as Schedule 1.

"Purpose": means recommending the Products to potential Customers and providing BigHand with Referrals.

"Referral": means any written referral provided by the Agent to BigHand in respect of a live business opportunity with a potential Customer with whom BigHand was not in current dialogue at the date on which the Referral was provided.

"Term": means the period during which the Agreement is extant, namely between the Effective Date of this Agreement and the date of its termination, as more particularly described in clause 8.

"Territory": means the geographical area, business sector and/or similar to which this Agreement is restricted, as specified at Schedule 1.

2. APPOINTMENT

BigHand appoints the Agent for the Purpose in the Territory for the Term of this Agreement on a non-exclusive basis. **By making a Referral to BigHand, the Agent acknowledges and accepts it has read and understood this Agreement.**

3. DUTIES OF AGENT

3.1 The Agent is not permitted to sell the Products and agrees that it will not make any attempt to sell the Products to anyone. **3.2** The Agent shall use best endeavours to market the Products to its current and prospective customers within the Territory. **3.3** The Agent, whether directly or indirectly, shall not: (a) act as an agent for any other person or organisation which offers or competes with BigHand, nor; (b) carry, deal with, market or sell any products which compete with the Products. **3.4** The Agent shall, within 7 days, notify BigHand of any information it has received indicating the interest of any prospective BigHand customer in purchasing any of the Products and shall introduce an Authorised BigHand Employee to such prospective customer within the same period. **3.5** The Agent shall not attend exhibitions, trade fairs, marketing events and the same, nor carry out any marketing activities, for the purpose of marketing the Products unless agreed in writing by the Parties in advance.

4. DUTIES OF BIGHAND

4.1 BigHand shall supply sufficient information about the Products for the Agent to perform his obligations under this Agreement. **4.2** BigHand shall use reasonable endeavours to secure any sale referred to it by the agent which it accepts pursuant to clause 5 of this Agreement.

5. REFERRALS

5.1 The Agent shall follow the procedure specified from time to time by BigHand for referring Customers and the Agent shall only refer Customers to the Products on the terms and conditions specified by BigHand from time to time. The Agent shall not vary such terms except where it has obtained the prior written authority of BigHand. **5.2** It shall be at BigHand's complete discretion as to whether BigHand shall or shall not accept any Referral by the Agent. **5.3** A Referral shall only be deemed accepted at the time BigHand sends an invoice to the customer requesting payment of the cost of that order.

6. FEES

6.1 BigHand shall issue the Credit Notes to the Agent at the value contained at clause 1 "Fees" of Schedule 1 to this Agreement. **6.2** For the avoidance of doubt, no Credit Notes will be issuable by BigHand in respect of: (a) the sale of any Products to a Customer where the Customer was engaged in active dialogue with BigHand, its Reseller or any other agent prior to BigHand receiving a written Referral from the Agent (b) any Customer who purchases any of the Products directly from BigHand at any time more than 6 Months after BigHand receiving a written Referral exclusively from the Agent, whether or not such Referral is accepted by BigHand (c) any sale by BigHand to the Customer of anything which is not a Product. **6.3** All operating expenses and costs incurred by the Agent in carrying out his responsibilities under this Agreement shall be the responsibility of the Agent. For the avoidance of doubt, neither operating expenses nor costs incurred by the Agent in carrying out his responsibilities under this Agreement shall be payable by BigHand unless otherwise agreed in writing by the Parties. **6.4** BigHand shall issue the Credit Notes in full no later than 30 days from the date on which BigHand has received cleared funds for all outstanding amounts owed by the Customer, subject to BigHand receiving a valid invoice from the Agent. **6.5** The Credit Notes shall only be used on future purchase from the Agent. For the avoidance of doubt, the Credit Notes cannot be used by the Agent on invoices issued prior to the Credit Notes. **6.6** The Agent can redeem the Credit Notes against hardware, new licences and annual recurring fees. The Agent shall remain responsible for payment of the sums in excess of the Credit Notes invoiced by BigHand. **6.7** The Credit Notes shall expire twelve (12) months following their issue date. Following their expiry the Agent will not be entitled to request to use the Credit Notes to pay any fees in relation to Products invoiced by BigHand. **6.8** BigHand may change the value of the Credit Notes at any time by notifying the Agent of such change in writing. Unless otherwise agreed by the Parties: (a) any change in the value of the Credit Notes will be effective immediately, and; (b) any change in the value of Credit Notes shall not apply to any orders already accepted by BigHand by the date of such notice. **6.6** On termination of this Agreement, the Agent shall be issued Credit Notes in respect of all Referrals that have been accepted by BigHand prior to such termination, subject to the Customer having paid to BigHand all outstanding amounts in cleared funds.

7. CONFIDENTIALITY

7.1 Each party shall keep confidential (a) the terms of this Agreement; and (b) any and all information of a confidential nature including, without limitation, trade secrets and information of commercial value ("Confidential Information"), that it may acquire in relation to the business or affairs of the other party.

Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under this Agreement, save that BigHand shall be entitled to communicate the Agent's Confidential Information to its Affiliates and any reseller or licensor. Each party shall ensure that its officers and employees (and in the case of BigHand, its Affiliates, licensors and resellers) comply with the provisions of this clause. **7.2** The obligations set out in clause 7.1 above shall not apply to any information which is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of this Agreement (including, in the case of BigHand, by a breach of confidentiality by its Affiliates, licensors or resellers), subsequently comes lawfully into the possession of such party from a third party or a party is required to disclose by order of a court of competent jurisdiction. **7.3** Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such Confidential Information. **7.4** Promptly after a request by the party who has disclosed Confidential Information ("disclosing party") or on termination of this Agreement, the party who has received Confidential Information ("receiving party") shall deliver to the disclosing party (or, with the disclosing party's consent, destroy) all records containing or relating to the Confidential Information that are in the receiving party's possession or under its control and, in the case of destruction, certify to the disclosing party, in writing, that it has done so. **7.5** The provisions of this clause 7 shall survive termination of this Agreement.

8. TERMINATION

8.1 Either party may terminate this Agreement without notice during the Term. **8.2** On termination of this Agreement, the Agent shall return all Products, and all materials (including all sales and marketing materials, price lists and guides) and samples that have been provided by BigHand to the Agent by the date of termination. The Agent shall also supply to BigHand all materials generated or obtained by the Agent relating to his duties and obligations under this Agreement including, but not limited to, all customer contracts, contact details, documents supplied by customers to the Agent, and all copies of the foregoing. The Agent shall not use any such Products, materials or samples beyond termination of this Agreement.

9. GENERAL PROVISIONS

9.1 No Partnership The Agent is an independent contractor. Nothing in this Agreement shall constitute the creation, employment or relationship of partnership, joint venture, or employer and employee between the Parties. The Agent shall not enter into any contracts, make any representation or give any warranty for on behalf of BigHand other than as expressly permitted under the terms of this Agreement. The Agent has no authority or ability to vary or alter any terms or conditions on which BigHand supplies the Products or Services to the customer. **9.2 Variations**: No variation of these terms and conditions will be valid unless confirmed in writing by BigHand. This Agreement is subject to change and by making Referrals to BigHand you agree that you accept the most recent version of the Agreement. Please check back periodically to ensure that you have the most up to date version. **9.3 Severability**: If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced and the said illegal or unenforceable provision shall, if possible, be construed in such a way as to be enforceable whilst, at the same time, most closely expressing the intent of the provision as originally drafted. **9.4 Waiver**: No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. **9.5 Force Majeure**: Neither party shall be liable for any failure or delay in the performance of this Agreement which is caused by circumstances beyond the reasonable control of a party, including, without limitation, any labour disputes between a party and its employees. **9.6 Third Party Rights**: Unless specified otherwise in this Agreement a person who is not a party to this Agreement has no right to benefit under or to enforce any term of it. **9.7 Assignment**: The Agent may not assign any of its rights or obligations under this Agreement without BigHand's prior written consent, which consent shall not be unreasonably withheld or delayed. BigHand may assign its rights and obligations under this Agreement by written notice to the Agent. BigHand may subcontract the performance of any of its obligations under this Agreement to a third party. **9.8 Notices**: Any notice required to be given pursuant to this Agreement shall be in writing and shall be delivered by courier, in person, by mail or by fax and will be effective when received at the address set out for the receiving party in the Order Schedule. **9.9 Dispute Resolution**: The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same. If the matter is not resolved through negotiation, the parties will attempt in good faith to resolve the dispute or claim by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator from venues in London. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings would not be prejudiced by any such delay. Nothing in this section shall limit either party's ability to seek injunctive relief or other emergency relief. **9.10 Anti-Bribery & Corruption**: The Parties shall: (a) not engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and/ or anti-corruption laws, regulations and/ or codes including but not limited to the Bribery Act 2010, and; (b) have in place adequate procedures designed to prevent any person connected (either directly or indirectly) with this Agreement from engaging in any activity, practice or conduct which would infringe any anti-bribery and anticorruption laws, regulations and codes including but not limited to the Bribery Act 2010. **9.11 Entire Agreement**: This Agreement contains the whole agreement between the parties in respect of the subject matter of the Agreement and completely and entirely replaces any prior written or oral agreements, representations or understandings between the parties relating to that subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations or assumptions that are not expressly incorporated in it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act. **9.12 Governing Law and Jurisdiction**: This Agreement is governed by and construed according to English law and the Customer irrevocably consents to the exclusive jurisdiction and venue of the courts of England and Wales. This choice of law and venue is made to ensure uniform procedures and interpretations for all of BigHand's Customers no matter where they may be located or where they use the Software.

BIGHAND LIMITED

BIGHAND REFERRAL AGREEMENT

SCHEDULE 1

1. **CREDIT NOTES**

Subject to clause 6 "Fees" of the BigHand Referral Agreement, BigHand shall issue to the Agent the following Credit Notes in accordance with Clause 6 of the Agreement:

- £20 per licence sold by BigHand to Customer on the first sale. For the avoidance of doubt, any further Products sold to the Customer following the first sale shall not accrue any Credit Notes.

2. **PRODUCTS**

The following products shall be deemed the "Products":

1. BigHand Enterprise Edition
2. All associated BigHand Enterprise client and server Modules
3. BigHand Professional Edition Author and Secretary
4. BigHand Professional Hosted Speech Recognition

3. **TERRITORY**

United Kingdom only.

4. **AUTHORISED BIGHAND EMPLOYEE**

Name:

Address:

Email:

Tel: