

## GENERAL TERMS AND CONDITIONS

### 1. RULES OF INTERPRETATION AND MEANINGS OF CERTAIN WORDS AND PHRASES,

#### 1.1 In this General Terms and each Contract:

- 1.1.1 words importing the singular shall include the plural and vice versa;
- 1.1.2 words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa;
- 1.1.3 a reference to one gender, includes the other genders;
- 1.1.4 clause headings shall not affect their interpretation;
- 1.1.5 when several days are provided for between the happening of one event and another, the number of days must be calculated by:
  - a) excluding the day on which the first such event occurs;
  - b) including the day on or by which the second event is to occur; and
  - c) excluding any day that is not a Business Day.

#### 1.2 Unless it appears differently from the context or under clause 1.3, words, terms and phrases used in a Contract shall have the same meaning as the definitions set out in the Electronic Communications Act, 36 of 2005.

#### 1.3 In these General Terms, unless inconsistent with the context or expressly stated otherwise, the following words and phrases, when capitalised, shall have the meanings set out below:

- 1.3.1 **"Acceptable Use Policy"** or **"AUP"** means Hypa's acceptable use policy, available at <https://www.hypa.co.za/acceptable-use-policy/>;
- 1.3.2 **"Activation Date"** means the date that a Service is configured and made available to the Customer;
- 1.3.3 **"Affiliate"** means in relation to a Party, a person who:
  - a) directly or indirectly controls such Party;
  - b) is directly or indirectly controlled by such Party; or
  - c) is controlled directly or indirectly by the parent company of such Party, and for the purposes of this clause 1.3.3 "control" means:
    - a) ownership of 50% (fifty percent) or more of the voting rights of a company, or
    - b) otherwise having the power to govern the financial and the operating policies of a company, or to appoint the majority of the directors of a company; and
    - c) includes a connected person as defined in section 1 of the Income Tax Act 58 of 1962;
- 1.3.4 **"Anticipatory Costs"** has the meaning as set out in clause 11.2.7;
- 1.3.5 **"Applicable Law"** means any of the following, to the extent it applies to the provision of the Services by Hypa and the use thereof by the Customer:
  - a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time. Without limiting the generality, statutes include the ECA, CPA and RICA;
  - b) the common law in the Republic of South Africa;
  - c) any binding court order, judgment or decree;
  - d) any applicable industry code, policy or standard enforceable by law;
  - e) any relevant direction, rule, pronouncement, policy or order that is given by a regulator.
- 1.3.6 **"Business Day"** means any day, excluding Saturdays, Sundays or public holidays as defined under the Public Holiday Act, 36 of 1994;
- 1.3.7 **"Business hours"** means from 8h00 to 17h00 on Business Days;

- 1.3.8 **“Charges”** means the amounts charged by Hype for Services, as set out in clause 11.2 below, which charges are set out in a quote and/or Subscriber Agreement or as notified by Hype from time to time per the terms of a Contract;
- 1.3.9 **“Circuit(s)”** means the telecommunications circuit(s) provided by Hype (or on behalf of Hype by a duly licensed third-party), installed at the Customer’s premise(s) at the addresses set out in a Contract. “Excluded Circuits” are defined in clause 1.3.20;
- 1.3.10 **“Commencement Date”** means the date when Hype has accepted and processed the Subscriber Agreement or notified the Customer that it has agreed to provide the Customer with the Services set out in a Subscriber Agreement or, failing either of the foregoing, the date on which the Customer commences using the Services;
- 1.3.11 **“Confidential Information”** means all information, in whatever form, which: (i) relates to a Contract; or (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;
- 1.3.12 **“Connection Date”** means the date when Hype successfully installs the Circuit at the Customer’s premises;
- 1.3.13 **“Consumer”** means a Customer who is a consumer as defined in the CPA, and “Individual Consumer” bears the meaning defined in clause 1.3.27;
- 1.3.14 **“Contract”** shall bear the meaning ascribed to it in clause 2.3;
- 1.3.15 **“CPA”** means the Consumer Protection Act, 68 of 2008 and regulations published in terms thereof, as amended or replaced from time to time;
- 1.3.16 **“Customer”** means the person described in the Subscriber Agreement and where such description is not wholly accurate, as further described in any documentation provided to Hype according to the requirements of RICA;
- 1.3.17 **“Customer Data”** includes, but is not 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 the Personal Information of the Customer, its employees or authorised users of the Services, and other data provided to or obtained by Hype and or its agents in connection with the provision of Services;
- 1.3.18 **“Due date”** means the date on which any amounts owed by Customer to Hype in respect of the Services become due and payable, and which is reflected in an invoice;
- 1.3.19 **“ECA”** means the Electronic Communications Act 36 of 2005 and its regulations, as amended or replaced from time to time;
- 1.3.20 **“Excluded Circuits”** are circuits that the Customer has procured itself from a party other than Hype;
- 1.3.21 **“Fixed Term Agreement”** refers to a Subscriber Agreement in terms of which the provision of Services is for a duration greater than 1 (one) month;
- 1.3.22 **“General Terms”** means these general terms and conditions without any Quotes, Subscriber Agreements or Product Terms, but including any addenda to this document;
- 1.3.23 **“Hype”** means Hype Telecommunications (Pty) Ltd, Registration number 2011/000797/07, a private company incorporated in terms of the laws of the Republic of South Africa;
- 1.3.24 **“Hype Network”** means the electronic communications network operated by Hype to render electronic communications services in terms of Hype’s electronic communications network and services licences. The Hype Network includes Circuits that are self-provisioned by Hype under its licenses or procured by Hype from third-party licensees;
- 1.3.25 **“Hype Portal”** any Hype approved extranet(s) or system(s) with web-based access (or a combination thereof) where Customer and its authorised employees, agents and representatives may access to, amongst other things and where applicable:
- a) view measurement data of selected Services;
  - b) have access to control panels and management interfaces to provision, upgrade, downgrade, increase, decrease (in general to manage) the Services;
  - c) process termination of Services;

- 1.3.26 **"ICASA"** means the Independent Communications Authority of South Africa and its successors;
- 1.3.27 **"Individual Consumer"** means a Consumer who is a natural person (in other words, not a company, close corporation, trust or other registered or incorporated entity);
- 1.3.28 **"Initial Period"** means the number of months applicable to the Fixed Term Agreement and which for any avoidance of doubt will be limited in the case of a Consumer, to a maximum of 2 (two) years;
- 1.3.29 **"Interest Rate"** means an annual rate equal to 5% (five percent) above the prime lending rate charged by Hypa's bankers, calculated daily and capitalised monthly;
- 1.3.30 **"Managed Service Equipment"** means equipment managed by Hypa in the provision of the Services;
- 1.3.31 **"Parties"** means Hypa and the Customer collectively, and **"Party"** means either Hypa or Customer, as the context requires;
- 1.3.32 **"Personal Information"** means, in relation to POPIA, all identifiable personal details conveyed to Hypa by the Customer for lawful Processing and includes, but is not limited to:
- a) contact details such as email addresses, telephone numbers and business or residential addresses;
  - b) demographic information such as age, sex, marital status, race, birth date and ethnicity;
  - c) historical information such as employment, financial, educational, and criminal;
  - d) private correspondence; and
  - e) private activities such as 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);
- 1.3.33 **"POPIA"** means Protection of Personal Information Act 4 of 2013 and any regulations published in terms of the foregoing, as amended or replaced from time to time;
- 1.3.34 **"Process"** or **"Processing"** means the handling of Personal Information as contemplated in POPIA, being any operation or activity or any set of operations, whether by automatic means or not, concerning Personal Information, including:
- a) the collection, receipt, recording, organisation, collation, storage, updating or modification, testing of, retrieval, alteration,
  - b) consultation, or use,
  - c) dissemination by means of transmission, distribution or making available in any other form, by electronic communications or other means; or
  - d) merging, linking, blocking, degradation, erasure, or destruction, which includes the collection, use, storage, dissemination, modification or destruction thereof regardless of whether such Processing is automated or not;
- 1.3.35 **"Product Terms"** means the specific terms and conditions applicable to particular Services provided to the Customer;
- 1.3.36 **"Quote"** means a written quotation issued by Hypa to the Customer giving the estimated cost for the specific Services recorded therein;
- 1.3.37 **"Renewal Period"** means a period of 12 (twelve) months, which period will start on the day following the last day of the Initial Period;
- 1.3.38 **"RICA"** means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time;
- 1.3.39 **"Services"** means the Services offered by Hypa as listed in a Subscriber Agreement, and where applicable includes the Managed Service Equipment and the Circuit;

- 1.3.40 “Software” means any computer program provided to Customer, either through Hypa acting as a principal, agent or distributor of the software licensor. Software may be embedded into Managed Service Equipment, supplied as a stand-alone application, or accessed via the internet or other web browsing method;
- 1.3.41 “Subscriber Agreement” means a document describing the Customer, the Services to be provided, and other administrative data;
- 1.3.42 “Subscriber Equipment” means the equipment as defined in section 1 of the ECA, but excludes Managed Service Equipment;
- 1.3.43 “User ID” means the approved User ID or other authentication mechanism provided by Hypa to the Customer to enable the Customer to access the Hypa Portal; and
- 1.3.44 “Website” means the website of Hypa at <https://hypo.co.za/#/coverage>.

## 2. NATURE OF THE GENERAL TERMS AND CONDITIONS

- 2.1 Hypa will provide to the Customer those Services described in a Subscriber Agreement.
- 2.2 These General Terms:
- 2.2.1 are the enabling or framework terms that apply to all Subscriber Agreements;
- 2.2.2 are supplemented by applicable Quotes and Product Terms;
- 2.2.3 govern the provision of the Services and the relationship between the Customer and Hypa in general, provided that:
- a) if Hypa and the Customer conclude multiple Subscriber Agreements with only one set of the General Terms, then that set of General Terms will apply to all Subscriber Agreements, regardless of whether the system generated contract numbers on the documents are not the same; or
- b) if Hypa and the Customer conclude multiple Subscriber Agreements each with its own version of the General Terms, then the General Terms will apply only to the relevant Subscriber Agreement– as evidenced by the system generated contract number.
- 2.3 Collectively, each individual Subscriber Agreement together with the General Terms and any associated Quote(s) and Product Terms, make up a separate and distinct contract between Hypa and the Customer (“Contract”).
- 2.4 The terms of one Contract will not apply to another unless expressly specified in any subsequent Contract.
- 2.5 Unless expressly provided to the contrary, in the event of a conflict between a Quote, Subscriber Agreement and its associated Product Terms or the General Terms, the conflict shall be resolved by applying the following order of preference:
- 2.5.1 the Quote;
- 2.5.2 the Subscriber Agreement;
- 2.5.3 the associated Product Terms; and thereafter
- 2.5.4 the General Terms.

## 3. DURATION, RENEWAL AND TERMINATION FOR CONVENIENCE

- 3.1 Commencement and duration of the General Terms and each Contract, billing start dates and renewal
- 3.1.1 These General Terms shall commence on the Commencement Date of the first Contract entered into between the Parties, and shall continue indefinitely and for so long as Hypa provides Services to the Customer.
- 3.1.2 Each Contract will become binding on the Parties on the Commencement Date and will continue to be binding on each Party up to the end of the Initial Period or any Renewal Period, unless terminated earlier by either of the Parties for cause on the grounds set out in these General Terms or the relevant Product Terms.

- 3.1.3 In respect of a Service that does not involve the provision of a Circuit, or is provided over an Excluded Circuit, the Initial Period will commence on the Activation Date of such Service. In respect of each Circuit, the Initial Period for Services provided over that Circuit (whether bundled with the Circuit or not) will commence from the Activation Date. Where the Services require the provision of multiple Circuits, the Initial Period will begin on the Connection Date of the last Circuit.
- 3.1.4 When Services are bundled with a Circuit, the cost of the Circuit is the single most significant component of the bundled Services, and accordingly, Customer agrees that Hypa will be entitled to charge the Customer from the Connection Date, regardless of whether any bundled value-added Services have been activated or not.
- 3.1.5 If Customer is a juristic person, then Customer must:
- a) give Hypa written notice of its election not to renew a Contract at least 90 (ninety) days before the expiration of the Initial Period; or
  - b) conclude a revised Subscriber Agreement commencing on the expiry of the Initial Period of the original Subscriber Agreement; failing which such Contract shall automatically renew for the Renewal Period.

## 3.2 Cancellation or variation of the Services before the Connection / Activation date

- 3.2.1 Where the Customer cancels or varies any of the Services before the Connection Date for any reason other than a breach on the part of Hypa, Hypa will have the right to charge the Customer Anticipatory Costs which Hypa has incurred because of the cancellation or variation, which amount shall be payable by the Customer on demand.

## 3.3 Termination of a Fixed-Term Agreement by an Individual Consumer for no cause

- 3.3.1 Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Individual Consumer gives Hypa at least 20 (twenty) Business Days' written notice of its election to terminate a Contract.
- 3.3.2 Such termination will be subject to payment of a reasonable cancellation fee that will be determined and calculated at the time when the notice to terminate is given by the Individual Consumer, using the guidelines set out under section 14 and regulation 5(2) of the CPA.
- 3.3.3 On receipt of the termination notice Hypa will advise the Individual Consumer of the amounts which are still owed to it, namely all the arrear amounts owing to Hypa in terms of the Contract up to the date of termination and the cancellation fee. The Individual Consumer will pay Hypa such amounts by the Due Date.

## 4. CANCELLATION PROCESS

- 4.1 Subject to clause 3.3 and unless Hypa expressly agrees to the contrary in writing, Customer must cancel a Contract on at least 90 (ninety) days' advance notice to take effect at the end of the Initial Period or the Renewal Period, failing which Hypa may charge the Customer a cancellation fee.
- 4.2 Cancellations must be processed through the cancellation request form in the Hypa Portal, or Customer must send a cancellation request to [cancellations@hypa.co.za](mailto:cancellations@hypa.co.za). The online cancellation request form will reflect the duration that is left for the relevant Services as well as the associated cancellation fee (if any). Cancellations received by email will be followed up with a quote setting out the cancellation fee (if any).
- 4.3 Email cancellations must contain at least the following information:
- 4.3.1 the Customer's account number; and
  - 4.3.2 the description of the Services (as described on the Customer's invoice) to be cancelled.
  - 4.4 Hypa will not be deemed to have received a cancellation notice unless it has issued Customer with written confirmation of receipt and a unique reference number. If Customer is not furnished with a unique reference number within 48 hours of transmitting its cancellation notice, Customer must escalate to [cancellations@hypa.co.za](mailto:cancellations@hypa.co.za).

4.5 Hypa's processing of a cancellation request shall be without prejudice to its right to any claim that it may have in terms of this Contract. Customer acknowledges and accepts that in many instances cancellation of Services is not reversible or may attract financial penalties, and therefore Hypa may delay the actual termination of Services after acknowledging receipt of a cancellation notice to communicate to Customer the consequences of termination and to allow Customer to withdraw a cancellation notice.

4.6 Customer shall remain liable for any Charges raised by Hypa against the Customer's account after the Customer has sent Hypa a cancellation notice that is not processed in the manner set out herein.

## 5. INSTALLATIONS AND PROVISION OF THE SERVICES

### 5.1 Installation of Services, Managed Service Equipment, Subscriber Equipment and use of unauthorised devices

- 5.1.1 Unless agreed to the contrary in a Subscriber Agreement, the Services are exclusive of any required Subscriber Equipment. The Managed Service Equipment and, where applicable, the Subscriber Equipment will be either leased or sold to the Customer at the prices, fees or rates set out in the Subscriber Agreement.
- 5.1.2 Where the Customer has agreed to purchase Subscriber Equipment from Hypa, the Customer shall not be entitled to withhold payment for the sale of Subscriber Equipment for trivial reasons.
- 5.1.3 In respect of the provision of electronic communications services, Hypa shall install the Circuit and the Managed Service Equipment at the Customer's premises against payment of the relevant installation fee and deposit as set out in the Subscriber Agreement.
- 5.1.4 If the Customer requests that an installation be attended to outside of Business Hours, Hypa may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Hypa from time to time.
- 5.1.5 LAN cabling pricing shall be determined during or after installation, unless a physical site survey has taken place to confirm cable routes.
- 5.1.6 If no conduit-pipes are available for Hypa's use in any building where Hypa must install Services requiring conduit pipes, Hypa may, at its discretion:
- refuse to provide the Services in that building or any part thereof until such conduit-pipes or other facilities have been so installed; or
  - quote an installation cost in respect of the required conduit pipes, and if accepted by the Customer, install the required conduit pipes or other facilities at the Customer's cost.
- 5.1.7 Hypa's duty to install the Circuit and the Managed Service Equipment or Subscriber Equipment will terminate once the Circuit and, where applicable, the Managed Service Equipment or Subscriber Equipment have been supplied, installed and the Customer can receive the Services.
- 5.1.8 Only Subscriber Equipment that has been type approved by ICASA may be used in conjunction with the Services. Type approved equipment obtained from authorised dealers will have an ICASA type approved label affixed to the equipment and/or packaging.
- 5.1.9 If the Subscriber Equipment has been modified, it may not be used in conjunction with the Services until such time that ICASA has approved such modification.
- 5.1.10 Hypa reserves the right to suspend or disconnect from the Hypa Network any Subscriber Equipment that has not been approved by ICASA or that has been licensed or approved but has been modified without the approval of ICASA.
- 5.1.11 If the Customer is not the owner of the premises where the Services and/or where applicable the Managed Service Equipment is to be installed, the Customer must before any installation by Hypa, at its own cost and expense, obtain written permission from the owner of such premises for any such installation. The Customer indemnifies Hypa against damages or claims resulting from the failure to obtain such permission including Anticipatory Costs which may have to be incurred by Hypa should Hypa have to remove any Circuit and/or the selected Managed Service Equipment from the premises.
- 5.1.12 The Customer must at its own cost and expense ensure that optimum environmental conditions as may be required for the proper management and/or functioning of the Circuit and Managed Service Equipment or Subscriber Equipment are provided, such as adequate power supply, ventilation, lighting and wall/rack space.

## 5.2 Use of the Services, Managed Service Equipment and related equipment

- 5.2.1 The provision of any Services to the Customer does not confer on the Customer any right to resell the Services unless the Customer has been granted a licence or licence exemption by ICASA, and Customer has entered into a reseller agreement with Hypa.
- 5.2.2 The Services may not be used to:
- a) knowingly create, store or disseminate any illegal content;
  - b) infringe on any third parties' intellectual property rights; or
  - c) send unsolicited email.
- 5.2.3 For Hypa to (i) ensure the provision of the Services, (ii) protect the integrity of the Hypa Network and (iii) deal with emergencies, for the duration of each Contract, the Customer must always:
- a) comply with any instructions issued by Hypa which concern the Customer's use of the Services;
  - b) provide Hypa with all information relating to the Customer's use of the Services that Hypa may reasonably require from time to time; and
  - c) allow Hypa free access to the Customer's premises during reasonable hours and upon reasonable notice in the circumstances, to install, inspect, maintain or remove the Circuit, Managed Service Equipment or Subscriber Equipment.

## 5.3 Failure and unavailability of the Services, Managed Service Equipment or Subscriber Equipment obtained from Hypa

### 5.3.1 Customer recognizes and accepts that:

- a) the Internet and data networks consist of multiple participating networks that are separately owned and not subject to Hypa's control; and as a result
- b) Hypa does not warrant that the Services will be operational on a 24 (twenty-four) hour 365 (three hundred and sixty-five) days per year basis.

5.3.2 Furthermore, Hypa expressly advises, and the Customer acknowledges and accepts that the Managed Service Equipment and the Subscriber Equipment is not manufactured by Hypa, but by third parties. In most cases, Hypa will not be able to open such equipment or to test or operate it to ensure that it is fit for purpose and/or is intact before it is handed to the Customer.

5.3.3 Given the disclosures contained in clauses 5.3.1 and 5.3.2, Hypa expressly stipulates, and the Customer acknowledges and accepts, that Hypa cannot and will not warrant or guarantee that the Services, the Circuit, the Managed Service Equipment and/or the Subscriber Equipment will:

- a) be free of errors or interruptions;
- b) be available;
- c) be fit for any purpose;
- d) not infringe on any third-party rights; and
- e) be secure and reliable;

except where any of the Services, the Circuit, the Managed Service Equipment and/or the Subscriber Equipment are found to be defective and such defect has been solely caused by Hypa under sections 54, 55 and 56 of the CPA, where applicable.

5.3.4 Given the foregoing, Customer agrees that it will not be allowed to:

- a) withhold any amounts due and owing to Hypa;
- b) deduct any monies; or
- c) allege a breach of contract;

in respect of any temporary unavailability of the Services, the Circuit, the Managed Service Equipment and/or Subscriber Equipment, except and to the degree that Hypa is solely responsible for any such unavailability, or failure.

- 5.3.5 Notwithstanding the provisions of clause 5.3.3, Hypa will use its best endeavours, where Hypa can do so, to notify the Customer of any failure of, or interruption to the Services and/or Circuit and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability.
- 5.3.6 Where the Circuit, Managed Service Equipment or where relevant the Subscriber Equipment are defective, or faulty, then in such an event, the Consumer's rights will be limited to those set out under clause 5.5.
- 5.4 Theft and Loss of Circuit, Managed Service Equipment and Subscriber Equipment provided by Hypa**
- 5.4.1 Whenever any Circuit, Managed Service Equipment or Subscriber Equipment purchased from Hypa has been delivered, and not paid for in full, is lost, stolen or destroyed, the Customer must immediately notify Hypa and any police officer at any police station in writing that the Circuit, Managed Service Equipment and/or Subscriber Equipment has been lost, stolen or destroyed.
- 5.4.2 Risk in the loss, theft, damage or destruction of the Circuit, Managed Service Equipment and the Subscriber Equipment will pass to the Customer on the date of delivery to the Customer's premises. Hypa reserves the right to hold the Customer liable for the full replacement cost of the Managed Service Equipment, the Subscriber Equipment and/or any other Hypa-supplied equipment (and where the same equipment has been discontinued, then the full replacement cost of the most comparable available equipment).
- 5.5 Maintenance of the Services, Managed Service Equipment and Subscriber Equipment**
- 5.5.1 Throughout the term of a Contract, the Service, any Circuit, Managed Service Equipment and Subscriber Equipment used by the Customer will be deemed to be in good working order until Hypa is advised otherwise.
- 5.5.2 The Customer is responsible for maintaining all Managed Service Equipment and Subscriber Equipment unless Hypa has agreed to provide maintenance for the Managed Service Equipment, which will be charged out at the rate set out in the Subscriber Agreement.
- 5.5.3 Unless either of clauses 5.5.5 or 5.5.6 apply, or unless expressly stated to the contrary, the costs in respect of any repair and/or maintenance of the Circuit and the Services will be incurred and covered by Hypa.
- 5.5.4 Hypa will attend to faults reported by the Customer during Business Hours and will apply its reasonable endeavours to have the affected Circuit, and/or the Services restored in the shortest possible time.
- 5.5.5 If the Customer requests that a fault be attended to immediately and requires repair work to be carried out outside of Business Hours, Hypa may, if it can perform such after-hours work, charge an after-hours maintenance charge on a time-and-material basis as determined by Hypa from time to time.
- 5.5.6 If Hypa determines that the fault reported by the Customer was caused by the Customer or by any Subscriber Equipment or by any other equipment that Hypa has not agreed to cover, the Customer will be liable for payment of the applicable call-out charges, as determined by Hypa from time to time.
- 6. USE OF SOFTWARE**
- 6.1 The Customer shall use any Software provided to it by Hypa only for the purposes for which it is intended and strictly in accordance with the provisions of a Contract.
- 6.2 The Customer shall not, nor permit anyone else to, reverse engineer, decompile, modify, tamper with, amend, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part, variation, modification, release or enhancement thereof, or have any software or any program written or developed based on the Software.
- 6.3 All rights of whatever nature in and to the Software and all upgrades, updates, modifications and variations thereto from time to time, shall vest in Hypa or its licensors and no rights in and to the Software, its upgrades, updates, modifications and variations thereto are granted or assigned to the Customer. The Customer shall not, at any time in any way, question or dispute the ownership of the Software and undertakes not to infringe or prejudice any rights of Hypa or its licensors in and to the Software.
- 6.4 Hypa shall upgrade any Software provided to the Customer under the Subscriber Agreement and, if not explicitly dealt with in the Subscriber Agreement, at its sole discretion.



## 7. USE AND STORAGE OF DATA

The Customer acknowledges and agrees that Hypa may establish, and the Customer will be bound by, generally acceptable use practices and limits concerning the use of the Services, including but not limited to, the period that the Customer's email messages, and other content uploaded on to Hypa's server is retained, the quantity and size of material that may be sent from or received by the Customer and available disk space that will be allocated to Hypa's servers on the Customer's behalf.

## 8. CONFIDENTIALITY

- 8.1 Each Party may be given access to Confidential Information of the other Party to perform its obligations under a Contract. A Party's Confidential Information shall not be deemed to include information that:
- 8.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
  - 8.1.2 was in the other Party's lawful possession before the disclosure;
  - 8.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
  - 8.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or
  - 8.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 8.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than carrying out its obligations and exercising its rights in terms of a Contract.
- 8.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access, is not disclosed or distributed by its employees or agents in violation of the terms of a Contract.

## 9. HYPA PORTAL

- 9.1 Hypa grants the Customer a non-exclusive, non-transferable, limited right to use the Hypa Portal.
- 9.2 Access to any such Hypa Portal shall be through an approved User ID.
- 9.3 Any modifications made by the Customer to the Services on the Hypa Portal shall be binding, and the Customer assumes full responsibility for payment obligations arising out of such modifications made.
- 9.4 The Customer acknowledges that the documentation and information accessible by the Customer through the Hypa Portal shall be deemed to be classified as the confidential information of Hypa and, as such, disclosure and use of such documentation and information shall be governed by the terms of clause 8.
- 9.5 The Customer shall:
- 9.5.1 take all necessary steps to maintain the security and integrity of all User IDs; and
  - 9.5.2 inform Hypa if the Customer has any reason to believe that any User ID (i) has or is likely to become known to someone not authorised to use it, or (ii) is being used, or is expected to be used, in an unauthorised way.
- 9.6 Hypa reserves the right to suspend the Customer's User IDs if at any time Hypa reasonably considers, after consulting with Customer whenever practicable, that there has been or is likely to be a breach of security in respect of any User ID. Hypa may issue replacement User IDs or cease suspension when Hypa is satisfied that the breach of security or threat of breach of security is, in its sole discretion, satisfactorily resolved.
- 9.7 Customer understands that Hypa may periodically amend User IDs to prevent unauthorised access to the Hypa Portal and the Customer will appoint an employee to whom Hypa may communicate any such amended User IDs.

## 10. GENERAL OBLIGATIONS OF EACH PARTY

- 10.1 In addition to its obligations as set out elsewhere in the General Terms, Hypa undertakes to:
  - 10.1.1 adhere to the Applicable Law;
  - 10.1.2 exercise the reasonable skill and care of a competent provider of the Services;
  - 10.1.3 uphold and abide by the respective codes of conduct (as amended from time to time) of ISPA and WASPA, available at <https://ispa.org.za/code-of-conduct/> and <https://waspa.org.za/wp-content/uploads/2021/05/WASPA-Code-of-Conduct-16.16-clean.pdf>; and
  - 10.1.4 abide by and uphold Hypa's code of conduct, available at <https://hypo.co.za/#/coverage>.
- 10.2 In addition to the Customer's specified obligations as set out elsewhere in the General Terms, Customer undertakes that it, or where relevant, its employees will:
  - 10.2.1 adhere to the Applicable Law;
  - 10.2.2 deal with Hypa employees and designated contractors in a courteous, respectful and professional manner and not in any manner act in an abusive way;
  - 10.2.3 raise any issues that it is experiencing through a trouble ticket using the relevant telephonic, email or online facilities and provide Hypa with any pertinent information that it may require resolving the trouble ticket; and
  - 10.2.4 abide by Hypa's Acceptable Use Policy.

## 11. CHARGES AND PAYMENT

- 11.1 In return for the supply of and access to the Services, the Customer agrees and undertakes to pay Hypa the Charges.
- 11.2 Any invoice will detail the following types of Charges, where applicable:
  - 11.2.1 installation charge: the installation charge and any other charges levied as a once-off initial charge in respect of the connection of the Services;
  - 11.2.2 reconnection charge: levied, where the Customer's right to use the Services is suspended due to non-payment, and which fee is in respect of any restoration of the Service, and is payable in advance, together with any outstanding amounts which are due to Hypa;
  - 11.2.3 ad-hoc / time and material charges: levied on each occasion for the provision of miscellaneous services requested by the Customer;
  - 11.2.4 recurring / rental charges: levied periodically, usually monthly – but in any event, as indicated in the Subscriber Agreement – in respect of the use and availability of the Services. Recurring charges are payable in advance for the first and any subsequent Rental Period on the first day of the month, with effect from the Activation Date;
  - 11.2.5 cancellation fee: a fee raised by Hypa to place it in the position it would have been in had the Customer fulfilled such Contract;
  - 11.2.6 call / usage charges: levied on the use of the Service where such use is metered. Call charges and usage charges are billed to the Customer at the end of each billing period;
  - 11.2.7 Anticipatory Costs: levied to recover the charges that Hypa would have billed for the duration of the Fixed Term Agreement if such Contract had run its full term; and
  - 11.2.8 interest on overdue amounts: any amount due by the Customer to Hypa not paid on or before the Due date indicated on the invoice shall bear Interest from the date that an Invoice became due.

### 11.3 Billing

- 11.3.1 Hypa will periodically, usually monthly, provide the Customer with a statement and an invoice for the amounts payable by the Customer. The invoice will be sent to the Customer by email.

- 11.3.2 Where there is an event which prevents an accurate determination of the number of units on which the call or usage charges are determined for a billing period, the call charge or usage charges for the period in question shall be set as the average call or usage charges for the preceding 6 (six) billing periods (or lesser billing periods if the Services have been provided for a shorter time).
- 11.3.3 The invoice sent by Hypa to the Customer is on the face of it, and until the contrary is proved, proof of the amount due by the Customer to Hypa. The Customer is, however, entitled to query or dispute any part of the invoice per the provisions set out under clause 15. All undisputed portions of the invoice must, however, be paid by the Due date.
- 11.3.4 If Hypa determines that the disputed amount is in error, Hypa shall credit the amount incorrectly debited. Should Hypa determine and inform the Customer that the disputed amount was billed correctly, then such payment, together with interest at the Interest Rate shall be paid by no later than the Due Date of the next invoice.
- 11.4 **Payments**
- 11.4.1 Unless Hypa expressly agrees to the contrary in writing, invoices are payable on presentation by way of a monthly debit order or by credit card. The first invoice for Services rendered is issued on the Activation Date and payable on presentation.
- 11.4.2 Invoices and statements are available for download on the Hypa Portal. Non-receipt of an invoice by the Customer shall therefore not be considered as a valid reason for late or non-payment.
- 11.4.3 The Customer shall be liable and responsible for payment until payment has been received into Hypa's bank account.
- 11.4.4 The Customer shall be in breach of a Contract by cancelling any debit order without the prior written consent of Hypa or where any debit order is returned unpaid or stopped or should any charge card account, or credit card account of the Customer be rejected. In such a case, Hypa will have the right to suspend the Customer's account until such time as arrears amounts together with interest thereon have been received and paid in full.
- 11.5 **Changes to Charges**
- 11.5.1 Subject to clause 11.5.4, Hypa shall be entitled to unilaterally increase any Charges, which increase will be relative to the Consumer Price Index. Increases linked to the Consumer Price Index usually are made once per year between January and April.
- 11.5.2 In addition, and subject to clause 11.5.4, if there is a price increase on components of the Services beyond the control of Hypa (for example, foreign exchange fluctuations, increased pricing on third-party products or services such as software license fees, surcharges, taxes, import duties, rates or levies, increased charges from other network operators or delay caused by any instruction of the Customer), then Hypa shall be entitled to increase the Charges of the affected Services in proportion to the increase in cost.
- 11.5.3 Notice of any increase in terms of clauses 11.5.1 and 11.5.2 ("Increase") will be given to the Customer in writing.
- 11.5.4 A Consumer (as defined in clause 1.3.13) will have the right to terminate a Contract without penalty or charge where any Increase renders the Service unaffordable to the Consumer, on condition that it gives Hypa 20 (twenty) Business Days' notice of its election to cancel such Contract. Where a Consumer terminates a Contract in accordance with its rights under this clause 11.5.4, such termination will be without penalty, except where the Consumer has been given or has purchased, but not yet paid for, Subscriber Equipment. In such case the Consumer will have a legal duty to make, and Hypa will have a legal right to demand from the Consumer, full payment in respect of the Subscriber Equipment less any amounts that have already been paid to Hypa in respect thereof before such termination.
- 11.6 **Unpaid Accounts – Suspension of Services**
- 11.6.1 Where any amounts due to Hypa by the Customer are not paid on Due date, Hypa shall give the Customer 7 (seven) days' notice to pay all arrears/outstanding amounts and start charging interest at the Interest Rate.
- 11.6.2 If the Customer's account remains unpaid or no written agreement is concluded to settle the arrears, Hypa shall suspend the Customer's Services, and the suspension will stay in place until the Customer has paid all arrear amounts, interest and any applicable reconnection charges or the Contract is terminated by Hypa.
- 11.6.3 If the Customer's account is in arrears, then Hypa shall be entitled to suspend all Services linked to the Customer's account, regardless of whether the suspended Services are delivered according to multiple Subscriber Agreements or not.

## 11.7 Credit Limit and payment terms

- 11.7.1 Hypa reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period. Should the Customer exceed such maximum amount, Hypa shall be entitled to suspend the Service after the Customer has been given 20 (twenty) days' notice of such overspend and has failed to respond thereto.
- 11.7.2 If Hypa and the Customer agree on payment terms that are different to those set out in clause 11.4 and Hypa has had to provide the Customer with a notice in terms of clause 11.6.1 twice in any rolling 12 calendar month period, then Hypa shall be entitled to revert to the default payment terms set out in this clause 11.

## 12. SUSPENSION, WITHDRAWAL OR TERMINATION OF THE SERVICES

12.1 In any of the circumstances set out in clause 12.3, Hypa may from time to time, and in its sole discretion:

12.1.1 suspend the Services and/or the right to use the Managed Service Equipment; or

12.1.2 disconnect the Managed Service Equipment from the Hypa Network.

12.2 Hypa shall, where reasonably possible, give notice of any such suspension or disconnection.

12.3 Hypa may implement the provisions of clause 12.1 in the following circumstances:

12.3.1 for routine maintenance, modifications to, or unplanned maintenance of the Hypa Network and/or any other systems involved in the delivery of the Services;

12.3.2 to mitigate against fraudulent or suspected fraudulent use of the Customer's Service;

12.3.3 in terms of either of clauses 11.6 or 11.7.1;

12.3.4 because of problems on third parties' infrastructure which have affected or disrupted the Services;

12.3.5 where certain Services are being abused by the Customer;

12.3.6 where the Services or Managed Service Equipment are found to contain a security risk or shortcoming which enables the Customer to exploit the Services to the detriment of Hypa;

12.3.7 where the Customer uses Subscriber Equipment that is not approved by ICASA for such use; and

12.3.8 where the Services are removed because of a take-down notice that Hypa is obliged to act on.

## 12.4 The Customer accepts that:

12.4.1 the foregoing rights of suspension and disconnection are necessary to maintain the quality of Services, preserve the integrity of the Hypa Network, and protect the interests of both the Customer and Hypa; and

12.4.2 it will remain liable for all Charges which may be levied by Hypa during the period of suspension or disconnection.

## 12.5 In any of the circumstances set out in clause 12.7, Hypa may from time to time, and in its sole discretion:

12.5.1 discontinue and/or terminate any part of a Contract; or

12.5.2 disconnect the Managed Service Equipment from the Hypa Network.

## 12.6 Hypa shall, where reasonably possible, give notice of any such discontinuation, termination or disconnection shall be without prejudice to any other claims or remedies which Hypa may have in terms of a Contract or in law.

## 12.7 Hypa may implement the provisions of clause 12.5 in the following circumstances:

- 12.7.1 where the Services or Managed Service Equipment have reached the end of its lifespan and are uneconomical to maintain or continue;
- 12.7.2 where there has been an insignificant interest in the use of the Services;
- 12.7.3 in response to an instruction from ICASA, or authority competent to issue such instruction, or in terms of the ECA or any other applicable law;
- 12.7.4 if the Customer has received the Services because of fraud or misrepresentation;
- 12.7.5 if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act 24 of 1936 (as amended) or any other applicable legislation;
- 12.7.6 if the Customer is using or permitting the use of the Service or any element thereof for any illegal purpose or in contravention of Applicable Law;
- 12.7.7 for any other reason incidental to clauses 12.7.1 to 12.7.6 inclusive.

## 13. BREACH AND TERMINATION

13.1 Should the Customer breach:

13.1.1 its payment obligations for a period longer than 7 (seven) days; or

13.1.2 any other term of a Contract and fail to rectify such breach within the notice period provided by Hypa (which shall be a reasonable period given the circumstances of the breach); then Hypa will have the right to either suspend or to cancel such Contract, without diminishing its right to claim any Anticipatory Costs or early termination penalties.

13.2 Should Hypa breach any material term of a Contract, then the Customer will have the right to provide Hypa with written notice requiring Hypa to rectify the breach within a period of 20 (twenty) Business Days. Should Hypa neglect or fail to remedy such breach within such period, then the Customer may cancel the Contract without penalty.

13.3 The Customer shall be liable for all costs, including legal costs on an attorney and client scale, tracing costs and collection commission, incurred by Hypa in respect of the enforcement of any obligations of the Customer in terms of a Contract.

13.4 Without diminishing any other claims or remedies which Hypa may have against the Customer in terms of a Contract or at law, Hypa may terminate a Contract if the Customer has delayed the installation of the Service for longer than 3 (three) months and hold the Customer liable for Anticipatory Costs incurred by Hypa in this regard.

## 14. SUPERVENING IMPOSSIBILITY

Except as expressly provided under a Contract, Hypa shall not be liable to the Customer for failure to perform any obligation because of any acts of God, government restrictions or prohibitions or any other Government act or omission, any act or default of any supplier, industrial disputes, strikes, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these were not foreseeable and beyond Hypa's reasonable control. Should any event contemplated in this clause prevent the provision of uninterrupted Services for a period exceeding 4 (four) weeks, the Customer shall be entitled to terminate the affected Service without penalty.

## 15. CUSTOMER ASSISTANCE, DISPUTES OR COMPLAINTS

### 15.1 Technical Complaints and Billing Queries

15.1.1 Hypa can be contacted for technical support and account queries at the details provided at <https://hypo.co.za/#/coverage>.

15.1.2 If the Customer experiences any trouble with any of the Services or with the Charges, it must bring the problem to Hypa's attention by raising a trouble ticket with Hypa by telephone, email or on the Hypa Portal. The issue will then be logged and detailed, and the Customer will be provided with a reference number.

15.1.3 Hypa will use its best endeavours to attend to the trouble tickets as soon as it is possible, which will depend on the complexity and nature of the problem as well as resource availability.

15.1.4 Where the Customer has exhausted all levels of escalation and remains of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to refer the matter to ISPA, which can be done via the complaints form at <http://ispa.org.za/code-of-conduct/complaints-form/>.

## 15.2 Complaints

If the Customer has a complaint that is not related to the performance of the Services or a billing query, the Customer must follow the Hypa complaints process, as amended from time to time, and made available on the Website.

## 15.3 Single Forum Resolution

The rights set out in clauses 15.1 and 15.2 are without prejudice to both Parties' respective rights to pursue a complaint or action in any other forum that has jurisdiction over the matter, including the right to submit the complaint to ICASA, provided that the same complaint shall not be lodged in more than one forum.

## 16. CONSEQUENCES OF TERMINATION

16.1 After termination of a Contract for whatever reason:

16.1.1 Hypa may, on reasonable notice, and in the Customer's presence, enter the Customer's premises to remove the Managed Service Equipment which is owned by Hypa; and

16.1.2 the Customer will remain liable for, and will pay on demand, all charges and/or costs outstanding at the time of termination or accrued thereafter because of the termination.

## 17. DISCLAIMER, LIMITED LIABILITY AND INDEMNITY

17.1 In respect of internet-based services, Hypa only provides access to the internet. Hypa does not operate or control the information, services, opinions or other content of the internet. Hypa reserves the right to take measures as may be necessary, in Hypa's sole discretion, to ensure security and continuity of Services on the Hypa Network, including but not limited to identification and blocking or filtering of internet traffic sources which Hypa deems to pose a security risk or operational risk or a violation of its AUP. In addition, the Customer acknowledges and accepts that Hypa does not own or control other third-party networks outside of the Hypa Network, and Hypa is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non-performance) within such networks or within interconnection points between Hypa Network and other third-party networks.

17.2 The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. Hypa shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security. The Customer shall remain fully responsible to Hypa for any usage billing billed to Customer's account up to 30 (thirty) minutes after the Customer has logged an official support ticket with Hypa requesting the suspension of the Services impacted by unauthorised access to the Services.

17.3 Hypa assumes no responsibility for the integrity, correctness, retention or content of electronic data transported via the Hypa Network.

17.4 Subject to the provisions of clause 17.6 below, Hypa shall not be liable to the Customer or to any third party for claims that arise or occur because of the Customer's use of the Services, whether such claim, action or damage is direct or indirect, consequential or contingent. Hypa shall not be liable for any loss of life; injury; medical expenses; support; financial loss or financial support; loss of earnings; loss of profit and/or income; loss of revenue; loss of business or goodwill; any other special damages; or any general damages, regardless of whether it was foreseeable or flowed naturally from the use of the Services.

17.5 Customer indemnifies Hypa against any claim or action which may be brought by any third party arising out of Customer's use of the Services or out of the use of the Customer's services.

17.6 Where a Consumer (as defined in clause 1.3.13) suffers any loss or damages because of the use of the Services, the Consumer, in this case, will be entitled to avail itself to the provisions under section 61 of the CPA, but subject always to the defences and exceptions permissible and available to Hypa and its service providers under the same section.

17.7 The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under a Contract.

## 18. CREDIT REFERENCE ENQUIRIES, PERSONAL INFORMATION, AND RICA

- 18.1 Hypa reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. Hypa shall also be entitled to furnish any information relating to the Customer's account and the Customer's compliance with these conditions to any registered credit bureau.
- 18.2 Customer agrees to and shall provide Hypa with all Personal Information and other details which Hypa is required to obtain from the Customer in terms of sections 39 or 40 of RICA.
- 18.3 The Customer acknowledges and accepts that where the Customer does not comply with the foregoing provisions, it will amount to a material breach by the Customer of the relevant Contract(s).
- 18.4 Hypa will use the Customer's Personal Information strictly in accordance with clauses 19 and 21 and the regulations promulgated in terms of section 69 of the ECA or POPIA, whichever is applicable.

## 19. PROCESSING OF PERSONAL INFORMATION

- 19.1 In terms of POPIA, Hypa has a legal duty to Process the Customer's Personal Information in a lawful, legitimate and responsible manner. In order to do so, Hypa requires the Customer's express and informed permission to Process its Personal Information.
- 19.2 The reason for Hypa requiring access to the Customer's Personal Information is to enable it and its appointed agents to:
  - 19.2.1 verify the identity of the Customer;
  - 19.2.2 perform appropriate checks and verifications of the Customer's credit history and solvency status;
  - 19.2.3 conclude a contract with the Customer, fulfil its obligations and exercise its rights in terms thereof, including but limited to, the functions of administering, provisioning, billing and reconciliation, maintenance and support required in terms of the contract;
  - 19.2.4 conduct product and service development and improvements;
  - 19.2.5 enable and facilitate fraud detection and prevention;
  - 19.2.6 monitor sales and revenue;
  - 19.2.7 perform market, customer and customer use analyses and to report thereon;
  - 19.2.8 comply with the applicable tax and financial legislation in the Republic of South Africa;
  - 19.2.9 keep records and to report to regulatory authorities in accordance with applicable laws in the Republic of South Africa; and
  - 19.2.10 notify the Customer of Hypa's existing and new services offered, subject to the Customer's right at any time to opt out of such communication.
- 19.3 All Personal Information which the Customer provides to Hypa will be held and/or stored in a secure manner for the purpose of enabling Hypa to deliver the Service(s) to the Customer in accordance with the terms of this Agreement.
- 19.4 The Customer's Personal Information will be stored electronically in a Database. For the purpose of improving the overall quality of the Service and support thereof, the aforementioned Database will be accessible to Hypa's appointed agents and its Affiliates.
- 19.5 Where appropriate or required by law, certain Personal Information may be retained in hard copy. Storage will be secured and audited regularly to ensure the safety and the security of the information stored therein.
- 19.6 Once the Customer's Personal Information is no longer required, it will be safely and securely archived for the minimum period permissible by law. Thereafter, all the Customer's Personal Information will be permanently deleted or destroyed.
- 19.7 In terms of section 11(3) of POPIA, the Customer has the right to object, within the prescribed manner, to the Processing of its Personal Information by Hypa. Section 11(1)(d) to (f) provides for reasonable grounds upon which such an objection may be raised, unless legislation otherwise provides for such Processing. Upon receipt of an objection, Hypa shall be prevented from Processing such Personal Information until such time as the objection raised has been resolved and/or withdrawn by the Customer.

- 19.8 The provisions of POPIA require that the Personal Information and related details supplied by the Customer to Hypa must be complete, accurate and up to date. It is the responsibility of the Customer to advise Hypa of any changes to its Personal Information, as and when such change arises.
- 19.9 Subject to a request complying with the procedural requirements stipulated in section 51 Promotion of Access to Information Act 2 of 2000, the Customer has the right to request Hypa to provide it with the following information:
- 19.9.1 the details of any Personal Information held by Hypa on the Customer's behalf; and
- 19.9.2 the details of how Hypa has Processed the Customer's Personal Information.
- 20. CUSTOMER DECLARATION**
- The Customer declares that:
- 20.1 all Personal Information supplied to Hypa, for the purposes of enabling it to provide the Service(s) to the Customer, and related legal and operational reasons is accurate, up-to-date, and comprehensive;
- 20.2 it shall immediately advise Hypa of any changes to its Personal Information as and when this occurs;
- 20.3 it has the right to object to the Processing of its Personal Information as detailed in clause 19.7;
- 20.4 it has a right to access its Personal Information by giving notice to Hypa, as detailed in clause 19.9, and to have any errors in such Personal Information rectified;
- 20.5 it understands that it may, subject to clause 20.6, withdraw the consent given in clause 21, by giving written notice to this effect to Hypa,
- 20.6 it understands that the withdrawal of consent contemplated in clause 20.5 will not affect the lawfulness of the Processing of Personal Information that occurred before such withdrawal. In addition, the following categories of Processing will not be affected:
- 20.6.1 Processing necessary to carry out actions for the conclusion or performance of this Agreement;
- 20.6.2 Processing that complies with an obligation imposed upon Hypa by law;
- 20.6.3 Processing that protects a legitimate interest of the Customer;
- 20.6.4 Processing that is necessary for the proper performance of a public duty by a public body; or
- 20.6.5 Processing that is necessary for pursuing the legitimate interest of Hypa or that of a third party to whom the information is supplied to.
- 20.7 while Hypa has developed and implemented internal policies and procedures, designed to protect the confidentiality of the Customer's Personal Information, the Customer acknowledges that:
- 20.7.1 Hypa cannot be held responsible for the privacy policies and practices in use by any web or internet sites that may be accessed by the Customer through use of the Service(s); and
- 20.7.2 Internet communications are inherently vulnerable unless they have been appropriately encrypted. Accordingly, Hypa accepts no responsibility or liability of any nature, whatsoever, should the Customer's Personal Information be intercepted or lost by causes beyond its reasonable control.
- 21. INFORMED CONSENT GIVEN BY CUSTOMER**
- 21.1 The Customer freely and voluntarily provides Hypa and its Affiliates with permission to Process its Personal Information, in accordance with the provisions of clauses 19 and 20 of these General Terms and of POPIA.
- 21.2 The Customer confirms that it understands the purposes for which such Personal Information is required and the manner in which it will be Processed, and consents to such Processing thereof.



## 22. GENERAL

### 22.1 Cession, delegation, assignment

Neither Party may cede, delegate, assign, charge, transfer or otherwise dispose of this Contract or any rights or obligations therein in whole or in part, without the written consent of the other Party. Such consent shall not be unreasonably withheld or unduly delayed. Notwithstanding the foregoing, Hypa may assign any and all of its rights and obligations hereunder: (i) to any Hypa Affiliate (ii) to a third party pursuant to any sale or transfer of substantially all the assets or business of Hypa or a Hypa Affiliate; or (iii) to a third party pursuant to any financing, merger, or re-organisation of Hypa or a Hypa Affiliate.

This Contract will be interpreted and governed by the laws of South Africa.

### 22.2 Applicable Laws and Jurisdiction.

This Contract will be interpreted and governed by the laws of South Africa.

### 22.3 Variation and Amendment

22.3.1 Subject to clause 22.3.2 and save where the right to amend a Contract has been mentioned explicitly under such Contract, neither Party may vary the terms of a Contract unless the other Party agrees to such variation and the variation is reduced to writing and signed by both Parties.

22.3.2 Hypa shall be entitled to amend any of the provisions of the General Terms and/or Product Terms, with the exclusion of the Charges which may be amended as stipulated in clause 11.5, at any time by giving the Customer not less than 30 (thirty) days' notice in accordance with clause 22.3.4 (the "Notice Period"), subject to any such amendment(s) only coming into effect:

- a) after the expiry of the Initial Period or Renewal Period then current of any Contract; or
- b) if the Contract runs on a month-to-month basis, then such amendment(s) shall become effective only upon the expiry of the Notice Period.

22.3.3 Subject to clause 3.3.1, if the Customer objects to any amendment made in terms of clause 22.3.2, it may terminate any affected Contract(s):

- a) with effect from the expiry date of the Initial Period or Renewal Period then current of such Contract(s), by giving Notice to Vox prior to such expiry date; or
- b) if the Contract(s) run on a month-to-month basis, then the Customer may terminate the Service Contract(s) with immediate effect, provided that Notice of termination is given to Vox within the Notice Period.

22.3.4 Hypa will give notice of any amendments to the Agreement by:

- a) posting the amended General Terms and/or Product Terms on the Website, and
- b) by emailing the Customer at its chosen email address specified in the Subscription Agreement.

22.3.5 The Customer acknowledges and agrees that it has a duty to keep itself informed of the latest version of the General Terms and Product Terms by accessing the Website on a regular basis.

### 22.4 Consumer status

Certain rights have been granted to a Customer who is a Consumer. Hypa reserves the right to withhold any of these rights and/or resultant benefits until the Customer can prove to Hypa, which proof may be in the form of a set of financial statements or an identity document, that it is a Consumer (and in the case of a right which it wants to exercise under section 14 of the CPA, that it is an Individual Consumer). Where the Customer is unable to show that it is a Consumer or Individual Consumer, Hypa reserves the right to reverse or call for a refund of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.

### 22.5 Customer details and changes thereto

The Customer agrees to supply Hypa with such information, documentation and signatures that Hypa may reasonably require at the time that a Contract is concluded, to give effect to the payment arrangements of such Contract. Any subsequent changes that affect the information supplied to Hypa, including but not limited to, the bank account or legal service address, must be brought to the immediate attention of Hypa in writing.

## 22.6 Whole Contract

Each Contract contains the sole and entire record of the agreement between the Parties pertaining to the subject matter of such Contract. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in writing and signed by both Parties, or as otherwise created by operation of law. For clarity, where it appears from the context of multiple Subscriber Agreements concluded between the Parties that they are intended to be read as one contract, then the Subscriber Agreements shall not be deemed to constitute separate and divisible contracts, and in such event, conflicting provisions of General Terms shall be resolved with the ordinary rules of interpretation.

## 22.7 Indulgences

No indulgence, leniency or extension of time which either Party ("the Grantor") may grant or show to the other, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future. Any indulgence or the relaxing of the provisions of a Contract by the Grantor shall not prejudice the right of the grantor to insist on the strict compliance by the defaulting Party of its undertakings and obligations in terms of such Contract.

## 22.8 Severability

In the event of any one or more of these terms and conditions being unenforceable, the offending clauses will be severed from the remainder of each Contract, which will nevertheless continue to be binding and enforceable.

## 23. LEGAL ADDRESS FOR SERVICE

23.1 The Parties choose the addresses set out below as their chosen place to receive legal notices:

23.1.1 Hypa at: Block D, Rutherford Estate, 1 Scott Street, Waverley, Johannesburg.

Notices must also be emailed to [legalnotifications@hypo.co.za](mailto:legalnotifications@hypo.co.za);

23.1.2 The Customer at: the physical or residential address specified in the Subscriber Agreement. Where Customer has entered into multiple Subscriber Contracts, then the physical address specified in the Subscriber Contract most recently signed by the Customer or its authorised representative.

23.2 All notices given in terms of this Contract shall be in writing. General notices that do not commence legal proceedings shall be sufficiently provided to either Party by way of email, or where applicable by any other electronic messaging service.

THESE PRODUCT-SPECIFIC TERMS AND CONDITIONS NEED TO BE READ IN CONJUNCTION WITH HYPA'S GENERAL TERMS AND CONDITIONS. WHERE ANY DISCREPANCY OCCURS, THE PROVISIONS OF THESE PRODUCT-SPECIFIC TERMS AND CONDITIONS SHALL APPLY.

### 1 Definitions

- 1.1 Capitalised terms not defined herein have the same meaning as defined in the General Terms and Conditions.
- 1.2 In these Product Terms, the following capitalised words and expressions shall, unless expressly stated or the context requires otherwise, shall bear the following meanings and similar expression shall have comparable meanings:
  - 1.2.1 **"28 Day Service"** means the Service described in clause 4.1.1;
  - 1.2.2 **"Contented"** means that multiple users are sharing the same network capacity. Contention ratios are based on the individual design of the third-party fibre access network over which the Hypa service is delivered
  - 1.2.3 **"Acceptable Use Policy"** means Hypa's acceptable use policy, available at <https://www.hypa.co.za/acceptable-use-policy/>;
  - 1.2.4 **"Date of Activation"** means the date on which technical provisioning of the service (switching it on) is affected;
  - 1.2.5 **"Debit Order Date"** means the date on which debit orders will be processed as selected by the Customer via the Payment Gate Service;
  - 1.2.6 **"Fibre Precinct"** means the area(s) in which pre-paid fibre services are provided by Hypa, as reflected on Hypa's website at <https://hypa.co.za/#/coverage>
  - 1.2.7 **"Hypa Network"** means the electronic communications network operated by Hypa to render electronic communications services;
  - 1.2.8 **"General Terms"** means Hypa's general terms and conditions, to which these Product Terms are subject, except where there is a conflict between them, in which event the Product Terms shall apply;
  - 1.2.9 **"Monthly Recurring Service"** means the Service described in clause 4.1.2;
  - 1.2.10 **"Payment Gateway"** means the service provider(s) selected by Hypa to provide the Payment Gateway Service to enable the Customer to make payment in terms of these Product Terms;
  - 1.2.11 **"Payment Gateway Service"** means the service provided by an e-commerce application service provider that authorises credit card, debit card or direct payments processing for third party businesses;
  - 1.2.12 **"Point of Presence"** means a specific point where two different communication devices or networks meet to establish an electronic association with each other;
  - 1.2.13 **"Product Terms"** means the product-specific terms and conditions set out in this document and any annexures, signed by the Parties, and appended hereto;
  - 1.2.14 **"Service"** means the pre-paid fibre to the home service described in clause 3;
  - 1.2.15 **"Throughput means"** how much data can be transferred from source to destination within a given timeframe;
  - 1.2.16 **"Uncapped"** has the meaning as set out in the ISPA guideline on broadband terminology published at <http://ispa.org.za/code-of-conduct/terminology-guidelines/>;and
  - 1.2.17 **"Unshaped"** means that Hypa does not prioritise or differentiate between different classes of traffic or activities.

### 2 Contract Documents

- 2.1 These Product Terms are to be read in conjunction with:
  - 2.1.1 The General Terms; and
  - 2.1.2 Hypa's Acceptable Use Policy.

## 3 Service Description

3.1 In a Fibre Precinct, Hypa will provide the Customer with:

- 3.1.1 Contended, Uncapped, Unshaped access to the Hypa Network via a Circuit, and the Equipment at a Hypa Point of Presence; and
- 3.1.2 internet access by transmitting and delivering IP packets between the Equipment connected on the Hypa Network by means of the Circuit and other networks in accordance with its standard business arrangements with providers of such other networks.

## 4 Service Options

4.1 In the Subscriber Agreement, the Customer will have selected one of the following Service Options:

4.1.1 the 28 Day Service, in terms of which, from the Date of Activation:

- 4.1.1.1 the Customer will have access to the Service for 28 (twenty-eight) consecutive calendar days;
- 4.1.1.2 Service availability will be immediate; and
- 4.1.1.3 the period will commence at midnight and end at midnight 28 consecutive calendar days thereafter; or

4.1.2 the Monthly Recurring Service in terms of which:

- 4.1.2.1 the Customer will have indefinite access to the Service from the Date of Activation, subject to the receipt by Hypa of the associated monthly fees on or before the Debit Order Date;
- 4.1.2.2 the Customer may terminate the Service in accordance with the provision of clause 21; and
- 4.1.2.3 Hypa may terminate the Service without notice in accordance with the provisions of clause 20, or on any basis permitted in the General Terms.

## 5 Order Acceptance and Service Commencement

5.1 All orders, placed online or through an authorised representative, are subject to acceptance by Hypa.

5.2 Should the Customer already receive fibre to the home services from a third party internet service provider ("ISP"), the order placed on Hypa will only be accepted once the ISP has released the line.

5.3 The acceptance of an order by Hypa will depend on, amongst other things:

- 5.3.1 the correctness of the product related information reflected in the order;
- 5.3.2 the availability of fibre network in the specified location;
- 5.3.3 RICA vetting; and
- 5.3.4 receipt of first payment.

5.4 Both the 28 Day Service and the Monthly Recurring Service commence on the Date of Activation.

## 6 Throughput Rates

6.1 Access to, and across, the Hypa Network is at the maximum Throughput rates set forth in the Subscriber Agreement. Maximum Throughput rates are not guaranteed.

6.2 Due to the nature of the Internet, Hypa can only control Throughput rates from the user network interface of the Equipment to the point of interconnection between the Hypa Network and the internet. This means that:

- 6.2.1 under these Product Terms, Hypa does not manage the Customer's home network; and
- 6.2.2 Hypa is not liable for the performance of the Customer's Wi-Fi network.

6.3 Throughput rates may also be reduced by Hypa in accordance with its Acceptable Use Policy.

6.4 In terms of the contractual obligations imposed on Hypa by upstream fibre network providers, Hypa may be required to adhere to certain fair use policies ("Use Policies"), and the Customer accepts and agrees that the Service it receives will be subject to any such Use Policies

## 7 Circuit

7.1 Hypa or the network operator supplies, configures, and tests the Circuit.

7.2 Each network operator defines its own standard installation. If a non-standard installation, re-installation, or any move of Equipment is required, the Customer shall be responsible for the costs of any facilities, extra cabling, additional trenching and other expenses that are necessary to install the Circuit. Such costs shall either be charged by the relevant network operator directly to the Customer, or through Hypa, depending on the business model of the relevant network operator.

7.3 At any point after installation of a Circuit Hypa shall be entitled to replace the Customer's Circuit with any other Circuit provided that:

7.3.1 such replacement does not result in the Customer incurring any additional charges; and

7.3.2 the quality of the new Circuit is equal or better than the replaced Circuit.

## 8 Equipment

8.1 The Equipment will be provisioned with a standard configuration in respect of the ordered Service.

8.2 The Customer must identify a suitable location for the Equipment. The location must be dry, free from vibration and well ventilated. Installation is only possible if the distance from the termination point of the Circuit and a 220V energy supply to the position the Equipment is not greater than 2 metres.

8.3 The optical network terminal supplied to the Customer as part of the Service shall be limited to a maximum of 10 (ten) Wi-Fi devices being connected simultaneously.

8.4 In the event of failure of the Equipment, Hypa will secure the repair or replacement (at Hypa or the relevant network operator's discretion) of the Equipment:

8.4.1 free of charge where such Equipment failure is covered by the warranty of the original Equipment manufacturer; or

8.4.2 at the expense of the Customer:

8.4.2.1 after the warranty has expired or has been rendered void; or

8.4.2.2 where the Equipment failure was caused by the Customer's use, misuse, or changes to the Equipment, other than as previously agreed to in writing by Hypa.

8.5 Where the Equipment is replaced, the Customer must return the original, faulty Equipment to Hypa or the network operator, whichever provided the replacement.

8.6 The Customer accepts liability for, and shall pay on demand, any costs incurred by Hypa as a result of the necessary repair or replacement of Equipment as contemplated in clause 8.4.2.

8.7 While the Customer will receive a username and Wi-Fi password, Hypa will retain the password necessary to configure the Equipment. Responsibility for the IP configuration of the Service configuration lies with Hypa.

8.8 The Customer shall never own the Equipment and no outright purchase or rent-to-own contracts are available. Ownership of the Equipment shall vest in Hypa or the supplying network operator.

## 9 IP Addresses

Hypa will dynamically assign IP addresses from Hypa allocated blocks obtained from AfriNIC and/or from product specific CGN Hypa address space. Any IP address allocated by Hypa to the Customer remains the property of Hypa and the Customer will have a non-transferable licence to use such addresses for a limited time.

## 10 Reporting Service

Hypa may provide usage information in the online customer zone. The content of any usage information will only be visible to authorised users or authorised Hypa employees. Usage information is for information purposes only and will not be used to calculate any service credits.

## 11 Accuracy of the Customer's Information

The Customer will provide Hypa with accurate and up to date information: (i) when completing the Hypa documentation; and (ii) when the Customer contacts Hypa to report a suspected fault and is asked a standard set of structured questions. Hypa shall not be liable for any loss suffered as a result of the Customer's failure to provide accurate information or any relevant facilities, which may lead to a delay in installation or service repair.

## 12 Maintenance

Scheduled maintenance on the Hypa Network will be performed during a standard maintenance window, and during change control windows as determined in consultation with the relevant third party provider of the Circuit. Hypa and the network provider reserve the right to perform emergency maintenance without prior notice, but Hypa shall nonetheless endeavour to provide such notice as is reasonably and practically possible in the circumstances.

## 13 Set Up and Configuration/ Installation Fees

13.1 Services offered by Hypa are all subject to:

13.1.1 a once-off set up and configuration or installation fee; and

13.1.2 network operator set-up fees.

13.2 The Customer acknowledges and accepts that, in addition to the Set-Up Fees, Network operators may charge a separate installation fee, billed directly to the Customer, for the installation of the Circuit from the boundary of the Customer's property to within the home, notwithstanding that the Service is ordered directly from Hypa.

13.3 Hypa shall be entitled to pass on to, and the Customer shall pay on demand, the cost of (i) any re-connection of the Services after suspension, and (ii) administrative fees related to transactions for refunds or payment failures, that a network operator or payment gateway provider is entitled to charge Hypa.

## 14 Security

The Customer acknowledges that the logical and physical security measures in relation to the Services are the Customer's sole responsibility. Hypa will not be held liable for any losses arising out of security breaches of the Customer's Services.

## 15 Disclaimer

Hypa will in no event be liable for lost or interrupted data, messages, packets, or other information transmitted to or from third party networks if such loss or interruption takes place outside of the Hypa Network.

## 16 PAYMENT

### 28 Day Service

16.1 The Customer may pay for the 28 Day Service by way of credit card or debit card via the Payment Gateway Service, or by cash via an EasyPay Outlet (the "Methods of Payment").

16.2 On selecting the 28 Day Service, the Customer will be directed to the Payment Gateway's website to make payment. Full instructions appear on the Payment Gateway website for all Methods of Payment.

16.3 The Customer acknowledges and accepts that:

16.3.1 they will have to register to use the Payment Gateway Services;

16.3.2 their use of the Payment Gateway Services will be subject to the terms and conditions of the Payment Gateway; and

16.3.3 EasyPay reference numbers generated via the Payment Gate Service are valid for 14 (fourteen) days, whereafter they will expire.

16.4 The Customer will be notified by Hypa upon the successful processing of a Customer's payment and will receive an invoice and receipt.

16.5 The Customer may purchase a maximum of 6 (six) consecutive 28 Day Service periods at one time.

#### Monthly Recurring Service

16.6 Fees for the Monthly Recurring Service are payable by the Customer in advance, by way of debit order deducted from their credit or debit card.

16.7 On selecting the Monthly Recurring Service, the Customer will be directed to the Payment Gateway where they will be required to provide details of their debit or credit card details.

16.8 The Customer acknowledges and accepts that:

16.8.1 they will be required to register to use the Payment Gateway Services offered by the Payment Gateway;

16.8.2 their use of such services will be subject to the terms and conditions of such Payment Gateway;

16.8.3 their payment information will be saved by the Payment Gateway on its website;

16.8.4 their chosen debit or credit card will be debited via the Payment Gateway for the first month's Service upon sign up and for future monthly payments, in advance on the debit order date selected;

16.8.5 future monthly payments will be debited via the Payment Gateway from the chosen debit or credit card on the date selected for the month ahead as this service is billed in advance; and

16.8.6 In order to align the Date of Activation with the selected debit order date, first time customers will be debited for the full fees for the first month of the Monthly Recurring Service. Thereafter, once the link is activated, a pro-rated amount will be debited on their next debit order cycle. By way of example, should you purchase the service on the 29th August, with the elected debit order date being the 1st. If the service is installed 3rd September, a pro-rated value for days of service between 3rd Sep – 30 Sept, will be debited on 1st October.

#### 17 Disclaimer and Indemnity

Hypa shall not be liable to the Customer or any third party for any losses or damages of any nature whatsoever suffered by the Customer arising directly or indirectly out of the use Payment Gateway Services offered by the Payment Gateway, or its website ("Claims") and the Customer indemnifies and holds Hypa, its directors and officers harmless against any and all such Claims.

#### 18 Promotional Pricing

18.1 Any advertised promotional pricing which may be offered from time to time, is done so at the discretion of Hypa.

18.2 Promotional pricing is subject to availability, either from the upstream network operator or Hypa and may be withdrawn at any time without notice.

#### 19 Relocation

19.1 The Circuit is not transferrable to another premises, due to the fact that the element of the Service comprising the Circuit is provided to the specific address set out in the Subscriber Agreement, with a Circuit leased by Hypa from a network operator.

19.2 Accordingly, should the Customer relocate, this will require the cancellation of the Service.

19.3 Notwithstanding that the cancellation is necessitated by relocation, Hypa will be entitled recover the cancellation fees detailed in clauses 19.2 and 19.3 from the Customer.

19.4 Requests for the Service at any new premises shall be subject to a feasibility study being conducted by Hypa to determine whether a network operator has adequate fibre infrastructure in order to provide the Service at the new location. Should there not be adequate fibre infrastructure or should the new premises not fall within the Fibre Precinct, then no Service can be offered.

## 20 Suspension

- 20.1 Should payment for the Monthly Recurring Service not be received for any reason, Hypa shall be entitled to suspend the Service as follows:
- 20.1.1 where a debit order failure results in non-payment, and two further debit order attempts made on the same day are unsuccessful, the Service will be suspended from midnight on the day of such failure;
  - 20.1.2 the suspension shall continue for a period of 9 (nine) days (the "Suspension Period") whereafter, should payment not have been made, the Service will be deactivated; and
  - 20.1.3 the Customer will have to reapply in order to have access to the Service again.
- 20.2 Should the Customer make payment before the expiry of the Suspension Period and the suspension is lifted, the Customer acknowledges and accepts that they shall not be entitled to any credit or refund in respect of the period of suspension.

## 21 Cancellation Terms

### 28 Day Service

Despite the 28 Day Service automatically expiring at the end of the 28-day period, the Customer must nevertheless give written notice of cancellation to Hypa at [cancellations@hypa.co.za](mailto:cancellations@hypa.co.za). Such notice may be delivered either before or after the date of such expiry but is necessary so that the line can be released by Hypa and made available to other service providers. Until such time as such written notice has been received by Hypa, Hypa takes no responsibility for (i) the line being unavailable to the Customer or other service providers, or (ii) for any expenses, losses or damages of whatever nature and howsoever arising, suffered by the Customer as a result of the line not being accessible. Monthly Recurring Service

- 21.1 In order to cancel the Monthly Recurring Service, the Customer must give written notice ("Notice") of their intention to cancel at least 14 (fourteen) Business Days prior to the next Debit Order Date (the "Notice Period"). Such Notice must be sent to [cancellations@hypa.co.za](mailto:cancellations@hypa.co.za).
- 21.2 Upon receipt of the Notice, the Monthly Recurring Service will be cancelled and deactivated at midnight on the day immediately preceding the customer's next recurring card payment, provided that such Notice has been received within the Notice Period. Should the Notice have been received after the required Notice Period, the Service will be cancelled at the end of the next service period. By way of example, should the Debit Order Date be the 1st of June, Notice must be received on or before the 16th of June in order for the Monthly Recurring Service to terminate on the 30th of June. Should the Notice be received after the 16th of June, the Monthly Recurring Service will terminate on the 31st of July.
- 21.3 Hypa shall be entitled to unilaterally cancel the Monthly Recurring Service in terms of clause 20.1, for non-payment. Prior to Activation
- 21.4 Should the Customer terminate a Circuit prior to it being activated by Hypa or prevent Hypa from activating the Circuit after it has been ordered, then the Customer shall be liable to Hypa for any installation and other charges which Hypa is liable to pay the network operator.

## 22 Resale of Service

Except where the Customer has obtained all the regulatory approvals and entered into a reseller agreement with Hypa, the resale of the Services or any bundled part thereof, including but not limited to VoIP, Mobile Data, Fat Pipe Data, Fibre Line and Equipment, is not permitted.