



This Lead Referral Agreement is an agency agreement concluded between:

Principal	
Registered Company Name:	Hypa Fibre (Pty) Ltd
Company Registration Nr:	2020/470615/07
VAT Number:	4150304477
Physical Office Address:	Block D2, Rutherford Business Park 1 Scott Street Waverley Johannesburg 2000
Email (legal notices):	legalnotifications@hypa.co.za
For attention:	Finance Director

And The Agent

1 INTERPRETATION

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

1.1. Words importing –

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

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

- 1.2.1. **"Agreement"** means this agreement, the Annexures hereto and the Business Rules;
- 1.2.2. **"Business Rules"** means the business rules, policies and procedures determined by the Principal to apply to the Agent's appointment in terms of this Agreement from time to time as notified by the Principal to the Agent from time to time;
- 1.2.3. **"Commencement Date"** means the date set on the cover page of this Agreement;
- 1.2.4. **"Customer"** means any third party in the Territory that had signed up for and paid for the Principle's Product. An **"Active Customer"** is a Customer with an active, paid-up

data subscription or is suspended but not yet terminated by either the principal or the network operator over whose network the Principal's Products are delivered. The Principal determines an Active Customer in its sole discretion.

1.2.5. **"Product"** means the telecommunications products and services sold by the Principal;

1.2.6. **"Territory"** means the Republic of South Africa;

1.3. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

1.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

1.5. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

1.6. Expressions defined in this Agreement shall bear the same meanings in schedules or Annexures to this Agreement, which do not themselves contain their conflicting definitions;

1.7. Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;

1.8. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;

1.9. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

1.10. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract shall not apply;

1.11. Any reference in this Agreement to a party shall, if such party is liquidated or sequestrated, apply also to and be binding upon that party's liquidator or trustee, as the case may be.

2 APPOINTMENT OF AGENT

2.1. The Principal appoints the Agent as a non-exclusive agent in the Territory to sell the Products, and the Agent accepts such appointment on the terms and conditions set out hereunder.

2.2. As from the Commencement Date, this Agreement shall supersede any agency agreement between the Principal and the Agent.

3 DURATION

3.1. The appointment of the Agent shall commence on the Commencement Date and shall continue indefinitely unless it is terminated:

3.1.1. in terms of clause 10; or

3.1.2. by either party without cause by giving the other 30 (thirty) days written notice.

4 THE AGENT'S DUTIES AND OBLIGATIONS

The Agent shall ensure that it and its employees, agents, consultants, contractors and subcontractors comply with the obligations set out below:

4.1. Solicitation Of Orders For The Products

- 4.1.1. actively solicit potential purchasers for the Products in the Territory;
- 4.1.2. provide information relating to the Products to potential Customers in the Territory;
- 4.1.3. deal with all enquiries from potential Customers promptly;
- 4.1.4. ensure that when approaching potential Customers, such Customers are not already Customers of the Principal as, unless otherwise agreed in writing by the Principal, no commissions shall be payable to the Agent in respect of sales concluded by the Agent under this Agreement in respect of such Customers;
- 4.1.5. perform, on behalf of the Principal, all obligations concerning such potential Customers as may be required of the Principal under the Regulation of Interception of Communications and Provision of Communication Related Information Act, 2002;
- 4.1.6. submit to prospective Customers only such contractual documentation as supplied to it by the Principal;
- 4.1.7. upon signature by a potential Customer of contractual documentation, submit all such signed contractual documentation per the service level obligations and directives imposed upon it as set out in the Business Rules ("service level directives"), including the subscriber agreement and variations or derivatives thereof, completed scoping documents, or any other relevant document that is required as part of the contractual paperwork, to the Principal for approval, processing and implementation;
- 4.1.8. ensure that concerning the solicitation of orders for the Products and the implementation of the sales in respect of the Products, it shall act under all or any conditions which may be stipulated by any competent authority and by all laws, statutes, regulations and other legal enactments applicable to such sales from time to time;

4.2. Generally

- 4.2.1. observe all directions and instructions given to it by the Principal concerning its appointment in terms of this Agreement and to the sale and implementation of the sales in respect of the Products, including, without limitation, the Business Rules and such rules and regulations as may be promulgated by the networks operator(s) from time to time;
- 4.2.2. act in all respects with due care and diligence and with good faith towards the Principal and promote and safeguard the interests of the Principal concerning the Product as if they were its interests;
- 4.2.3. immediately disclose to the Principal all such facts and circumstances as the Agent may suspect or might come to its notice which might affect the interests of the Principal concerning the Products or the Customers;
- 4.2.4. not incur, save as expressly provided in this Agreement, any liability on behalf of the Principal nor in any way pledge or purport to pledge the credit of the Principal nor accept any order nor make any contract binding upon the Principal;
- 4.2.5. save to give effect to this Agreement, not hold itself out as the legal agent, representative or employee of the Principal;
- 4.2.6. not make any promises, representations, warranties or guarantees about the Products except as expressly authorised in writing by the Principal;
- 4.2.7. ensure that all its employees and representatives are adequately trained, to the satisfaction of the Principal, in the marketing and selling of the Products;
- 4.2.8. advise the Principal from time to time of direct and indirect competition concerning the sale of the Products in the Territory;

- 4.2.9. shall attend meetings and training programmes with the Principal, as and when required by the Principal, on dates to be specified by the Principal from time to time;

4.3. Compliance with laws

- 4.3.1. acquaint itself with and comply with all applicable laws relating to:

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

collectively referred to as “Applicable Law”.

- 4.3.2. not do or omit to do anything likely to cause the Principal to be in breach of any such Applicable Law;
- 4.3.3. allow the Principal, whether itself or through an agent, to conduct an audit of records and information held by the Agent or its sub-contractors or any other relevant person concerning the performance by the Agent of its obligations under this Agreement;
- 4.3.4. if requested and at the Principal's reasonable cost, provide the Principal sufficient reasonable assistance to enable the Principal to perform any actions required by any government or agency in any jurisdiction for compliance with any Applicable Law or in connection with any investigation relating to the Applicable Law;
- 4.3.5. maintain adequate internal accounting controls and reasonably detailed books, records and accounts in respect of the supply of Products or performance of services to the Principal;
- 4.3.6. in respect of this Agreement, only be paid by the Principal by electronic funds transfer or other traceable instrument to a bank account in the Agent's name;
- 4.3.7. promptly notify the Principal of any allegation of fraud, bribery or corrupt or unlawful practices made against the Agent in court, arbitration or administrative proceedings, or any investigation is commenced in respect of such allegations at any time during the term of this Agreement;
- 4.3.8. ensure that any natural or legal person external to the Agent performing services in connection with this Agreement does so only based on a written contract that secures from such person terms equivalent to those imposed on the Agent in this clause. The Agent shall be responsible for the observance and performance by such persons of these terms and shall be directly liable to the Principal for any breach.

5 THE PRINCIPAL'S OBLIGATIONS

The Principal shall –

- 5.1. upon request, supply the Agent with all relevant information which the Agent requires to enable the Agent to perform its obligation under this Agreement;
- 5.2. at its cost, provide the Agent with any sales literature and technical and marketing information concerning the Product as the Principal considers reasonably necessary to assist the Agent in procuring orders for the Product;
- 5.3. provide reasonable assistance to the Agent with negotiations for the sale of the Products to existing or potential Customers in the Territory and when deemed appropriate by the Principal attend meetings for this purpose;

- 5.4. keep the Agent advised in writing of all developments made from time to time in regard to the Products;
- 5.5. make its production and other facilities available during normal business hours to any prospective Customer for reasonable inspection;

6 COMMISSION

- 6.1. Subject to clause 6.4 and the Agent completing sales of the Products strictly per the Principal's Business Rules and service level directives, the Principal shall be liable to pay the Agent commission calculated as follows.

Commission per net sale (excluding VAT) - R 250.00

- 6.1.1. Net sales means positive growth of Active Customers measured on the last business day of a month against the last business day of a preceding month.
 - 6.1.2. Net sales are determined by the principal in its sole and absolute discretion.
- 6.2. The Principal shall furnish the Agent with a commission schedule reflecting the net sales and the commission payable by the Principal to the Agent, which schedule shall, save in the case of manifest error, be final and binding on the parties, provided however that the Principal shall, upon request by the Agent, make available to the Agent such information which the Principal deems reasonably necessary to enable the Agent to verify the commission.
- 6.3. The Agent shall render a tax invoice to the Principal for the commissions owing to it in terms of this Agreement, together with the applicable VAT thereon if the Agent is registered for VAT. The Agent's invoices shall be paid by the Principal as follows:
 - 6.3.1. If the invoice is rendered on or before the 7th calendar day of a month and it accords with the commission schedule, the principal shall pay it by the last day of the same month in which the invoice was within 30 (thirty) days of the date of such invoice.
 - 6.3.2. If the invoice is rendered after the 7th calendar day of a month and accords with the commission schedule, the principal shall pay it by the last day of the following month.
- 6.4. Should the Agent fail to render a monthly invoice to the Principal for the commissions owing to it within 3 (*three*) months after the Agent was provided with a commission schedule, the Agent's rights shall have been prescribed and the Principal shall not be obliged to pay the Agent the commission owing for such amounts.
- 6.5. Should this Agreement be terminated by:
 - 6.5.1. the Principal in terms of clause 10; or
 - 6.5.2. the Agent for any reason whatsoever or howsoever arising,the Agent will, with effect from 30 (thirty) days after such termination, automatically forfeit any claims for the commission which may otherwise have accrued post cancellation of this Agreement.

7 PERFORMANCE MEASUREMENT

- 7.1. The Agent will not have any sales targets.

8 THE CUSTOMERS

All sales of the Products effected under this Agreement shall, for the avoidance of doubt, be regarded as sales directly between the Principal and the Customer concerned, and the Agent shall not be entitled to receive for its account any amounts payable by the Customer arising from such sales.

9 ASSIGNMENT

The Agent shall not be entitled to cede its rights or assign its obligations to any third party. The Principal shall be entitled to cede its rights or assign its obligations to any third party on written notice to the Agent.

10 BREACH

10.1. Subject to clause 10.2 below: If any party breaches any provision or term of this Agreement and fails to remedy such breach within seven (7) days of receipt of written notice requiring it to do so (or in the time and manner specified in any other clause that contains its own remedies for non-compliance with that specific clause), then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.

10.2. the Principal shall be entitled to terminate this Agreement immediately and without notice if –

- 10.2.1. the Agent suffers a judgment which is not satisfied in full or appealed against (provided that such appeal is timeously and successfully prosecuted) or in respect of which an application to set it aside or rescind it is not made within 14 (fourteen) days after it becomes known to the Agent;
- 10.2.2. the Agent commits any act of insolvency as contemplated in the Insolvency Act, 1936;
- 10.2.3. the Agent is placed in liquidation or under judicial management, whether provisionally or finally; or
- 10.2.4. the Agent breaches clause 4.3.

11 CONFIDENTIALITY AND RESTRAINT OF TRADE

11.1. It is agreed that in the course of his duties the Agent-

- 11.1.1. has acquired and/or will acquire considerable know-how in and will learn of the Principal's techniques relating to the Principal's business;
- 11.1.2. will have access to names of Customers and suppliers with whom the Principal does business, whether embodied in written form or otherwise;
- 11.1.3. will have the opportunity to forge personal links with Customers and suppliers of the Principal; and
- 11.1.4. generally will have the opportunity to learn and acquire the trade secrets, business connections and other confidential information about the Principal's business, all collectively referred to in this Agreement as "the trade secrets".

11.2. It is acknowledged that the only effective and reasonable manner in which the Principal's rights regarding the trade secrets can be protected is the confidentiality obligations imposed upon the Agent in terms of clause 11.

11.3. The Agent irrevocably and unconditionally undertakes in favour of the Principal that to protect the proprietary interests of the Principal in the trade secrets, it will not during the existence of this Agreement or at any time thereafter either use or directly or indirectly divulge or disclose to others (except as required by the terms of this Agreement) any of the trade secrets, and shall not, during the existence of this Agreement or at any time thereafter disclose to any third party any of the trade secrets.

11.4. The Agent shall not, for the duration of this Agreement and 1 (one) year from its termination, whether as proprietor, partner, director, shareholder, member, agent, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise and whether for reward or not, directly or indirectly influence or otherwise try to persuade any Customer of the Principal to purchase products from a competitor of the Principal or to cancel a subscription agreement.

- 11.5. The Agent acknowledges and agrees that the confidentiality and restraint obligations referred to above are reasonably required for the protection of the Principal and are generally fair and reasonable.

12 DOMICILIUM CITANDI ET EXECUTANDI

- 12.1. The parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the addresses on the cover page of this Agreement.
- 12.2. Any notice or communication required or permitted in this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by e-mail.
- 12.3. Either party may, by notice to the other party, change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs or its postal address or its telefax number or e-mail address, provided that the change shall become effective on the 5th business day from the deemed receipt of the notice by the other party.
- 12.4. Any notice to a party –
- 12.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
 - 12.4.2. sent to its chosen email address, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or
- 12.5. Notwithstanding anything to the contrary herein, a written notice or communication received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

13 WHOLE AGREEMENT, NO AMENDMENT

- 13.1. This agreement constitutes the whole agreement between the parties relating to the subject matter hereof and supersedes all previous agreements between the parties relating to the subject matter hereof.
- 13.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof shall have any binding effect unless reduced to writing and signed by authorised representatives of both parties.
- 13.3. No extension of time, waiver, or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate to preclude such party thereafter from exercising its rights strictly under this Agreement.
- 13.4. To the extent permissible by law, no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or was negligent.