



The following Terms and Conditions of Service, including any future changes, are incorporated into and made part of any Agreement for Internet, Voice, and/ or Television service ("Service") between:

**Daystarr Communications,**

P. O. Box 698

Owosso MI 48867

("Company"), and

and Customer...

The terms "Agreement" and "this Agreement" refer to the underlying Service Agreement with the Customers, these incorporated Terms and Conditions, and any future changes to these incorporated Terms and Conditions.

## **ARTICLE I – GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES**

1.1 **USE OF SERVICE.** Customer is responsible for the manner in which it uses of any Service. Customer and all Users shall comply with all applicable state and federal laws and regulations. Customer is responsible for ensuring that all the equipment used with a Service is compatible with the Services. If Customer desires to secure Customer's transmissions in connection with any of the Services, Customer must procure, at Customer's own cost, encryption software or other transmission protection.

1.2 **BILLING AND PAYMENT.** Customer agrees to pay for the Services at the prices and charges contained in its Service Agreement with DayStarr without deduction, setoff, or delay. The Company will determine the billing period and may change it from time to time and without Notice. Any mathematical error in a billing thus may be corrected by the Company within a reasonable time. Payment is due on the date specified on the bill. Restrictive endorsements or other statements on checks are void. The Company may charge a late payment fee for overdue payments at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law. The Company has the right to recover all costs (including attorneys' fees) for collecting delinquent or dishonored payments. The Company may require Customer to pay a deposit as a condition of providing or continuing Service, and has the right to apply the deposit against any past due amounts at any time.

1.3 **TERM AND RATE CHANGES.** The term of this Agreement is for month to month from the date the Company first provides Service to Customer under this Agreement. Because Service provided under this Agreement is on a month to month basis, rates may change at the beginning of a monthly billing period. Customer agrees that its monthly invoice will constitute sufficient notice of a rate change.

1.4 **COMPANY TERMINATION.** This Agreement may be terminated by the Company immediately upon notice where Customer (i) fails to pay for the Services when due, and fails to make payment within fifteen (15) days after notice from the Company of such past due amounts owing; (ii) is in breach of any portion of this Agreement; (iii) has become insolvent, ceased operations, is the subject of a bankruptcy petition, or has made an assignment for the benefit of creditors; (iv) commits a fraud upon the Company; (v) utilizes the Services to commit a fraud upon another party; (vi) unlawfully uses the Services; (vii) abuses or misuses the Company's network or Services; or (viii) interferes with another customer's use of the Company's network or services.

1.5 **WITHDRAWAL OF SERVICE.** The Company reserves the right to withdraw a Service upon reasonable notice.

1.6 **TRADEMARKS AND TRADENAMES.** Neither party may use the other party's name, trademarks, tradenames, or other proprietary symbols without the prior written approval of the other party.

1.7 **SUCCESSORS AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties. This Agreement is personal and cannot be assigned by Customer, in whole or in part, without the prior written consent of the Company. The Company may (i) assign in whole or relevant part its rights and obligations under this Agreement

1.8 **LIMITATION OF LIABILITY.** The Company shall not be liable for any delay or failure in performance whatsoever owing to delays attributed to carriers, customs or importation; Acts of God; natural disasters; or shortages of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics, and similar occurrences. In no event shall the Company or its successors, assigns, or heirs be held liable for (i) any incidental or consequential damages, lost profits, or lost data, or any other indirect damages even if the Company has been informed of the possibility thereof, (ii) any costs or expenses for the procurement of substitute equipment or services, (iii) any claim based upon the combination, operation or use of any Service supplied hereunder with equipment, devices or software not supplied by the Company, (iv) any claim based upon alteration or modification of any service supplied hereunder, (v) service defects, (vi) service levels, delays or interruptions unless specifically provided otherwise in this Agreement, (vii) any interruption or error in routing or completing calls or other transmission (including 911 calls), (viii) lost or altered transmissions, (ix) unauthorized access to or theft, alteration, loss, or destruction of Customer's or others' applications, content, data, network, or systems, or (x) mistakes, omission, interruptions, delays, errors, or defects in a Service caused by Customer's negligence. Notwithstanding anything else herein, all liability of the Company under this Agreement shall be limited to money paid by Customer to the Company for the services provided under this Agreement during the twelve (12) month period preceding the event or circumstances giving rise to such liability. This liability limit is cumulative and not per incident.

1.9 **DISCLAIMER OF WARRANTY.** THE COMPANY MAKES NO EXPRESS OR IMPLIED WARRANTY AND DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR THOSE ARISING FROM USAGE OF TRADE OR COURSE OF DEALING. FURTHER, THE COMPANY MAKES NO WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE CORRECTLY ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911). **FURTHERMORE, THE COMPANY MAKES NO WARRANTY REGARDING: (i) NETWORK SECURITY; (ii) THE ENCRYPTION EMPLOYED BY ANY SERVICE; (iii) THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR LOAD BALANCED; (iv) THAT THE COMPANY'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA; OR; (v) THAT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.**

1.10 **SURVIVAL AND APPLICABILITY.** These disclaimers and limitations of liability will apply regardless of the form of action, whether in

contract, tort, strict liability or otherwise and whether damages were foreseeable. These disclaimers and limitations of liability will survive failure of any exclusive remedies provided in this Agreement.

1.11 **THIRD PARTY CLAIMS.** Customer agrees at its expense to defend or settle any claim against the Company, its affiliates, and its and their employees, directors, subcontractors, and suppliers, and to pay all compensatory damages finally awarded against such parties where: (i) the claim alleges that a Service infringes any patent, trademark, copyright or trade secret, and (a) Customer's or a User's content; (b) modifications to the Service by Customer or third parties, or combinations of the Service with any services or products not provided by the Company; (c) the Company's adherence to Customer's written requirements; or (d) use of the Service in violation of this Agreement(ii) the claim alleges a breach by Customer or any User of a software license agreement governing software provided with the Services, or (iii) the claim, if true, would constitute a breach of this Agreement.

1.12 **LIMITATIONS OF CLAIMS.** Any claim or dispute arising out of this Agreement must be filed within two (2) years after the cause of action arises and the parties waive any statute of limitations to the contrary.

1.13 **EQUIPMENT.** Any and all equipment provided by Frontier or the Company in connection with this Agreement, including that equipment which is installed on Customer's premises, shall remain the sole property of the Company during the term of this Agreement and after the termination of this Agreement. Customer is responsible for the return of all Company-provided equipment to Company in the event of termination of this Agreement. If upon termination Company elects to retrieve Company-provided equipment itself, Customer will provide access to retrieve such equipment. Customer agrees to provide electric power to such equipment, and to keep the equipment physically secure and free from liens and encumbrances. Customer bears the risk of loss or damage (other than ordinary wear and tear) of such equipment.

1.14 **RESALE.** Customer may not resell, trade, barter, or otherwise agree to provide Service under this Agreement to entities other than Customer without written consent of Company.

1.15 **ACCESS TO PREMISES; HAZARDS.** The Company may need to access Customer's premises and/or other premises not under the Company's control ("non- Company locations") to provide Service. Customer agrees to allow (or obtain permission for) the Company to access all non- Company locations (other than public property) and equipment reasonably required to provide Service. Access includes the ability to review information and the right to construct, install, repair, maintain, replace and remove access lines and network facilities, and to use ancillary equipment space within any building, necessary for Customer's connection to the Company's network. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer shall ensure that all non-Company locations at which the Company installs, maintains or provides the Services is a suitable and safe working environment, free of any substance or material that poses an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. If the Company encounters any such hazardous materials at a location, the Company may terminate the affected Service, or suspend performance until Customer removes the hazardous materials.

1.16 **COMPANY CONFIDENTIAL INFORMATION.** Customer acknowledges that, during the term of this Agreement, it may obtain information relating to the Service and to the Company which is of a confidential and proprietary nature. Such proprietary information may include, but is not limited to, trade secrets, know how, invention techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans. Customer shall at all times, both during the term of this Agreement and for a period of at least three (3) years after its termination, keep in trust and confidence all such proprietary information, and shall not use such proprietary information other than to carry out its rights under this Agreement with respect to the service provided under this Agreement, and shall not disclose any such proprietary information without the Company's written consent. Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party.

1.17 **CUSTOMER CONFIDENTIAL INFORMATION.** The Company acknowledges that, during the term of this Agreement, it may obtain information relating to the business of Customer which is of a confidential and proprietary nature. Such proprietary information may include, but is not limited to, trade secrets, know how, invention techniques, processes, programs, schematics, software source documents, data, financial information, and sales and marketing plans. The Company shall at all times, both during the term of this Agreement and for a period of at least three (3) years after its termination, keep in trust and confidence all such proprietary information, and shall not use such proprietary information other than to carry out its rights under this Agreement with respect to the service provided under this Agreement, and shall not disclose any such proprietary information without Customer's written consent.

1.18 **ADDITIONAL SERVICES.** The terms and provisions of this Agreement will apply to any Service the parties agree to add while this Agreement is in effect, except to the extent the documentation implementing the provision of such additional Service specifically indicates otherwise.

1.19 **TAXES AND OTHER CHARGES.** The quoted prices do not include, and Customer agrees to pay, all applicable taxes, regulatory surcharges, recovery fees, shipping charges, and other similar charges specified or allowed by any governmental entity relating to the sale, use, or provision of the Services. Taxes and governmental surcharges will be in the amounts that federal, state, and local authorities require or permit.

1.20 **CREDIT VERIFICATION.** Customer gives the Company permission to verify Customer's credit history.

1.21 **BINDING AGREEMENT.** This Agreement shall not be binding upon either party until both parties have indicated acceptance of the terms and conditions herein contained by executing the Service Agreement. Upon timely receipt by both parties of executed copies of the Service Agreement, this Agreement shall be binding on the Parties, their respective heirs, devisees, successors, and assigns.

1.22 **WAIVER.** The failure of a party to require strict performance of any provision of this Agreement by the other, or the forbearance to exercise any right or remedy, shall not be construed as a waiver by such party of any such right or remedy or preclude any other or further exercise thereof or the exercise of any other right or remedy.

1.23 **SEVERALABILITY.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

1.24 **GOVERNING LAW.** The terms of this Agreement shall be construed and enforced under the laws of the State of Michigan.

1.25 **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings or agreements whether oral or written.

1.26 HEADINGS. The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Agreement.

1.27 ARBITRATION. The Company and Customer agree to exercise best efforts to resolve all disputes and claims through good faith negotiation. The Company and Customer further agree that any such dispute or claim that cannot be resolved by negotiations shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules in effect at the time the dispute is submitted for resolution (the "Rules"), as may be modified by this Agreement. This agreement to arbitrate is intended to be broadly interpreted. CUSTOMER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND THE COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Judgment on the award rendered by the arbitrator(s) may be entered in any court having proper jurisdiction. Such arbitration shall be held in the Counties of Ingham, Clinton or Shiawassee in the State of Michigan.

Within twenty (20) days of the issuance of a written notice to arbitrate by one party to the other, as provided by the Rules, the parties shall jointly select one (1) independent arbitrator licensed to practice law. If the parties cannot jointly agree on an arbitrator within the specified 20-day period, then the selection shall promptly be made by the AAA in accordance with the Rules and the criteria set forth above.

The Federal Arbitration Act, 9 U.S.C. §1, et seq., governs the interpretation and enforcement of this provision. In no event shall the arbitrator have the authority to make any award that is in excess of, or contrary to, what this Agreement provides. Notwithstanding the foregoing, either party may bring an individual action in small claims court. The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. CUSTOMER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, CUSTOMER AND THE COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. THE COMPANY AND CUSTOMER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Furthermore, unless Customer and the Company agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or collective proceeding. If this specific provision is found to be unenforceable, then the arbitration provision shall be null and void.

1.28 EARLY TERMINATION FEE. If Customer terminates Service at a date other than the last day of the billing month, Customer will be assessed an Early Termination Fee equivalent to the charges for the remaining days in the billing month from the termination date.

## **ARTICLE II – GENERAL TERMS AND CONDITIONS APPLICABLE TO INTERNET SERVICE**

2.1 FEES AND RATES. Customer shall pay to the Company a one-time installation/activation fee. This fee may include the installation of the modem or router with necessary filters, lease of the modem for the duration of service and activation of the circuitry. Customer shall also pay either a monthly or annual rate to the Company, with the first month's/year's payment to be paid in advance of services rendered by the Company. Billing will begin at the time of installation, with payment made in advance for the prescribed length of time.

2.2 OTHER RATES. Additional networking, network configuration, or other technical assistance provided by the Company (other than that required of the Company by this Service Addendum) shall be billable to Customer at the reduced rate of \$80/hr.

2.3 FAILURE TO RETURN MODEM. Failure of Customer to return modem to the Company at the termination of services will result in a fee of \$99.00. Failure to return the Optical Network Terminal ("ONT") to the company at the termination of services will result in a fee of \$300.

2.4 ACCEPTABLE USE POLICY. Customer shall at all times use the Services provided by the Company in an appropriate manner. Inappropriate use of Service shall include, among other things, using the Internet, the exchange of information, electronic mail, or any hardware or software in connection with this Service Addendum, or any other activities of Customer, that is in any way irresponsible, malicious, or illegal. This Agreement specifically prohibits the impersonation of others (attempting to impersonate any person, using forged headers or other identifying information, etc.), unsolicited commercial appeals (SPAMming, excessive cross-posting to newsgroups, the sending of unsolicited commercial email, or using a Company email address to collect responses from unsolicited commercial email, etc.), any disruption of Internet Services (including spreading of harmful software, mail bombing or sending large volumes of unsolicited email, denial-of-service attacks, etc.), harassment (sending harassing or threatening email or other electronic transmissions, etc.), pornographic materials, unfriendly network activity (those activities which can be detrimental to the operation of the Internet or of other networks, etc.), privacy violations (attempts to access any computer system, including that of the Company, without proper consent and authorization), and using programs to defeat system bandwidth or security monitors, etc. Flagrant violations of appropriate use shall be deemed adequate reason for the Company to terminate Internet Service, and, at the Company's option, other Service provided under this Agreement without notice. The Company shall have the right to reasonably ensure that Customer shall abide by these expectations of appropriate use.

2.5 NO COMPANY CONTROL OVER INTERNET MATERIAL. Company has no control over websites or other URLs other than those designed and operated by the Company. Company is not responsible for any information received over the Internet during its provision of Service. The Internet provides opportunity for offensive materials, and the Company accepts no responsibility for the presence of such materials. Customer is responsible for the risk of exposure to such materials, and is further responsible for establishing the propriety, quality, warranties, salability, and usability of any products or services available through the use of Service.

2.6 USE OF ACCOUNT. After completion of the sign-up procedure, the Company may issue Customer a username and password. Customer and those whom Customer authorizes are the only persons authorized to use this account, and Customer shall ensure that all such users are apprised of this restriction and will comply with it.

2.7 BANDWIDTH. Pricing for telecommunications services is based on sharing of the telecommunication network. Such network is not a dedicated connection (i.e., one which guarantees a constant uninterrupted usage at any level). The Company reserves the right to restrict usage of bandwidth by Customer which goes beyond normal shared usage. Notification of such restriction will be provided to Customer, along with options for meeting the needs of both Customer and the Company. Customer furthermore agrees not to use this account for high-volume or high bandwidth use. Excessive bandwidth use may result in additional charges. Customer may obtain additional bandwidth by entering into a different contractual arrangement with Company.

2.8 DESCRIPTION OF INTERNET SERVICE. The Company shall provide Customer with access to the Company Internet backbone via a circuit providing bandwidth speed up to quoted speed. Customer shall also be provided with one IP address (additional IP addresses may be

obtained upon request; static IP addresses are available at \$5 per month per number requested). Customer shall also be provided with installation and connection to the Company network.

2.9 NETWORKING. Any networking necessary at Customer's location shall be provided by Customer or will be provided by the Company under a separate agreement, but at a cost not to exceed \$80/hr. for labor, plus materials. It is the Company's responsibility to provide a managed Internet Service to Customer's location. It is Customer's responsibility to maintain and ensure the compatibility of Customer's network with such Internet service (although this may be separately contracted with the Company.) COMPANY ASSISTANCE. The Company will be available by telephone, fax, or email to assist Customer in connection with the provision of Service, configuration, and troubleshooting. The Company will be available at any time for such assistance, and shall be allowed three (3) hours for response to requests for assistance. Customer shall provide reasonable access to equipment and software related to services such that problems may be diagnosed and corrected remotely.

2.10 RIGHT TO MONITOR SERVICE. The Company shall have the right to monitor Service at the sole discretion of the Company when it determines it is necessary to protect itself or other customers, or to adequately maintain Service. The Company may use the results of such monitoring to determine breach of this Agreement, and may disclose the results of such monitoring to comply with laws or regulations.

2.11 OTHER CARRIERS' NETWORKS. The Company has no control over traffic on other carriers' lines. Therefore, the Company shall not be responsible for connection speed when it results from congestion on other carriers' networks.

2.12 SERVICE DOWN TIME. Routine down time for maintenance and periodic system failures resulting from power outages, etc. shall cumulatively be limited to 10 hours per month, after which the Company shall reimburse Customer a prorated amount for the excess down time.

2.13 AS AVAILABLE BASIS. Service is provided to Customer on an as available basis with no warranty that Service will be uninterrupted, free of viruses, or free of other undesirable problems.

### **ARTICLE III – GENERAL TERMS AND CONDITIONS APPLICABLE TO VOICE SERVICES**

3.1 RATES. Initial rates for residential local and long distance services are identified in Customer's Service Agreement. Any future adjustments to the Initial rates will be effectuated via subsequent monthly billings. INSTALLATION. There is no charge for installation to Customer's D-marc. For installation past Customer's D-marc, the Company will charge \$80.00 for the 1st hour, and \$20.00 for each ¼ hour increment thereafter.

3.2 TERMINATING EXISTING LONG DISTANCE CARRIER. Customer is responsible for terminating Customer's existing long distance carrier service after completion of the Company's installation of services.

3.3 SERVICES NOT AVAILABLE. Third party charges and incoming collect calls are not available.

### **ARTICLE IV – GENERAL TERMS AND CONDITIONS APPLICABLE TO TELEVISION SERVICES**

4.1 Television service provided by TVC. DayStarr Communications acts as the billing agent.

TVC, Inc.  
3095 Sheridan Rd  
PO Box 329 Lennon, MI 48449  
810)621-3363.