

DayStarr Communications

Terms & Conditions for Business Services

These Term and Conditions are incorporated by reference into Service Addendums and/or Service Agreements (“Service Agreements”) reached between DayStarr LLC d/b/a DayStarr Communications (“Company”) a Michigan limited liability company located at 307 N Ball St, Owosso, MI 48867 and certain of its customers (“Customer”), These Terms and Conditions are incorporated into the Service Agreements as of the date of initial signing and as of the date of any modifications of these Terms and Conditions, as provided herein.

ARTICLE 1 – GENERAL TERMS AND CONDITIONS

- 1.1. **USE OF SERVICE.** The Company will provide Services to Customer, subject to availability and operational limitations of systems, facilities, and equipment. Provision of Service under the terms of the applicable Service Agreement is contingent on availability of the Service to Customer’s location (final determination may differ from preliminary approval). Customer is responsible for use of any Services. Customer and all Users shall comply with all applicable state and federal laws and regulations. Customer is responsible for ensuring that all of 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 the Service Agreement, which may be modified from time to time and provided in these Terms and Conditions. Customer’s payment shall be without deduction, setoff, or delay for any reason. The Company will determine the billing period and may change it from time to time and without prior Notice. Charges begin to accrue at the start of each billing period and continue through the full billing period. Any mathematical error made by the Company or any of its representatives does not constitute an offer and thus may be corrected or modified by the Company. Payment is due on the date specified on the bill, or, as specified in the Tariff, Guidebook or Service Guide, whichever is later, or, if no date is specified, thirty (30) days after the bill date. Restrictive endorsements or other statements on checks are void. The Company may charge a late payment fee for overdue payments in an amount specified in the applicable Tariff, Guidebook or Service Guide, or, if no such rate is specified, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law. The Company has the right to also 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 Service and has the right to apply the deposit against any past due amounts at any time.
- 1.3. **PAPER BILLING FEE.** The Company may charge a monthly paper billing fee when Customer desires to receive a mailed paper bill rather than electronic mail invoice.
- 1.4. **TERM.** These Terms and Conditions shall remain in effect for the term specified in the associated Service Agreement or, if applicable, as provided in Article 2, below.
- 1.5. **CUSTOMER TERMINATION.** Subject to early termination fees described in any Service Agreement, Customer may terminate a Service Agreement for any reason upon 30 days advance notice. If Customer subscribes to multiple Services Agreements, these Terms and Conditions for those Services that remain in effect. If any Service is disconnected prior to the rendering by the Company of a billing statement, Customer may be liable for reimbursement to the Company for time and materials, and any third-party charges the Company incurred prior to the effective date of disconnect. Where the Company is not in material breach, Customer will be responsible for payment of early termination fees as indicated in each Service Agreement. Customer may terminate a Service Agreement without being responsible for payment of early termination fees only where the Company is in material breach, where Customer has provided written notice that includes a detailed description of such breach to the Company, and where the material breach remains uncured for more than thirty (30) days after such notice.
- 1.6. **COMPANY TERMINATION.** A Service 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.
- 1.7. **WITHDRAWAL OF SERVICE.** The Company reserves the right to withdraw a Service upon reasonable notice.
- 1.8. **CHANGES TO THESE TERMS AND CONDITIONS.** These Terms and Conditions may be changed at any time by the Company by posting a dated, revised version on the Company web site. Any revisions to the prior Terms and

Conditions will take effect (30) thirty days after posting.

- 1.9. **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.
- 1.10. **SUCCESSORS AND ASSIGNMENT.** A Service Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto. A Service 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 a Service Agreement to an affiliate or subsidiary of the Company, a firm or corporation which shall control, be under the control of or be under common control with the Company, or any corporation or entity into which the Company or a subsidiary of the Company may be merged or consolidated or which purchases all or substantially all of the assets of the Company or a subsidiary of the Company, or (ii) subcontract work to be performed under a Service Agreement.
- 1.11. **COMPANY ASSISTANCE.** The Company will be available at any time to receive a report of trouble and assist the Customer in connection with the provision of services, configuration, and troubleshooting. Customer shall provide reasonable access to equipment and software related to services such that problems may be diagnosed and corrected remotely.
- 1.12. **SERVICE DOWN TIME.** Unless specifically indicated otherwise in a Service Agreement, 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. **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.
- 1.13. **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 supplied Service 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.
- 1.14. **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.
- 1.15. **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 a Service Agreement of these Terms and Conditions.
- 1.16. **THIRD PARTY CLAIMS.** The Company agrees at its expense to defend or settle any claim against Customer and to pay all compensatory damages finally awarded against Customer where the claim alleges that a Service infringes any patent, trademark, copyright, or trade secret, except where the claim arises out of: (i) Customer's or a User's content; (ii) modifications to the Service by Customer or third parties, or combinations of the Service with any services or products not provided by the Company; (iii) the Company's adherence to Customer's written requirements; or (iv) use of the Service in violation of these Terms and Conditions. The Company may at its option either procure the right for Customer to continue using, or may replace or modify, the alleged infringing Service so that the Service becomes non-infringing, or failing that, to terminate the Service without further liability to Customer. 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 falls within the exceptions listed in this paragraph above; (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.

- 1.17. 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.
- 1.18. EQUIPMENT. Any and all equipment provided by the Company, including that equipment, which is installed on Customer's premises, shall remain the sole property of the Company during the term of and after the termination of the associated Service Agreement. Customer agrees to provide access to retrieve such equipment in the event of termination of Service. 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.
- 1.19. FAILURE TO RETURN COMPANY EQUIPMENT. Failure of Customer to return Company equipment at the termination of services will result in a fee of up to \$300 per piece of equipment being assessed to Customer.
- 1.20. RESALE. Customer may not resell, or otherwise by any trade, barter, or other agreement, provide to entities other than Customer Services provided under the terms of this Agreement without written consent.
- 1.21. 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 the Services. 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 the Services. 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.
- 1.22. COMPANY CONFIDENTIAL INFORMATION. Customer acknowledges that, during the term of a Service 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 a Service 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 a Service Agreement with respect to the service provided, 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 a Service Agreement without the prior written consent of the other party.
- 1.23. CUSTOMER CONFIDENTIAL INFORMATION. The Company acknowledges that, during the term of a Service Agreement, it may obtain (such as by virtue of the Internet connection being under the control of the Company) 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 a Service Agreement and for a period of at least ten (10) 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.
- 1.24. ADDITIONAL SERVICES. These Terms and Conditions will apply to any Services the parties agree to add while a Service Agreement is in effect, except to the extent the documentation implementing the provision of such additional services specifically indicates otherwise.
- 1.25. 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.
- 1.26. CREDIT VERIFICATION. Customer gives the Company permission to verify Customer's credit history.

- 1.27. **BINDING AGREEMENT.** A Service Agreement shall not be binding upon either party until such time as both parties have executed the Service Agreement.
- 1.28. **WAIVER.** The failure of a party to require strict performance of any provision of a Service Agreement or these Terms and Conditions 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.
- 1.29. **SEVERALABILITY.** If any provision of a Service Agreement or these Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, all remaining terms, will remain in full force and effect as if such invalid or unenforceable provision had never been included.
- 1.30. **GOVERNING LAW.** The terms of a Service Agreement and these Terms and Conditions shall be construed and enforced under the laws of the State of Michigan.
- 1.31. **ENTIRE AGREEMENT.** These Terms and Conditions, any associated Service Agreement, any applicable DayStarr Tarriff, Guidebook, or Service Guide and any Service Addendums constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings or agreements whether oral or written.
- 1.32. **HEADINGS.** The paragraph and other headings contained in a Service Agreement and these Terms and Conditions are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions.
- 1.33. **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 these Terms and Conditions. This agreement to arbitrate is intended to be broadly interpreted.

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 State in which the Services are billed. In the event Customer is billed by the Company for Services in multiple states, such arbitration shall be held in the State of Customer’s primary business.

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 a Service Agreement and these Terms and Conditions provide. 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 A SERVICE 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.

ARTICLE 2 – EXTENDED SERVICES

From time-to-time, COMPANY may provide service to Customer service beyond the term of the associated Service Agreement. (“ Extended Services”). For example, Extended Services may be provided in circumstances where a Customer has not been responsive to efforts by the Company to sign a new Service Agreement to apply after expiration of a previously existing Service Agreement. Rather than disconnect a Customer who is otherwise in good standing, the Company may provide Extended Service until the parties reach a formal replacement agreement or the Customer requests disconnection. The above example does not limit the circumstances where the Company may deem it appropriate to provide Extended Service. When Extended Service is provided, the following terms will apply.

- 2.1 **TERM.** Extended Services provided under this article will be on a month-to-month basis. Either party may notify if its

intent to terminate services by providing a 30-day notice to the other party.

2.2 EARLY TERMINATION FEE. There are no early termination fees for Extended Services.

2.3 RATES AND FEES. Company may adjust the rates for Extended Services, at its discretion.

ARTICLE 3 – TERMS AND CONDITIONS APPLICABLE TO INTERNET SERVICE

- 3.1. 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 provided Services or any hardware or software in connection with this Service, or any other activities of Customer, that is in any way irresponsible, malicious, or illegal. These Terms and Conditions prohibit the impersonation of others, SPAMing via unsolicited commercial email, 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 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). Except where services are identified to be dedicated, reselling internet service purchased under this Addendum to third parties independently or as part of bundled transaction is prohibited. Flagrant violations of appropriate use shall be deemed adequate reason for the Company to terminate Service provided hereunder without notice. The Company shall have the right to reasonably ensure that Customer shall abide by these expectations of appropriate use.
- 3.2. NO COMPANY CONTROL OVER INTERNET MATERIAL. It is understood that the Company has no control over websites or other URLs other than those designed and operated by the Company, and that the Company is not responsible for any information received over the Internet during its provision of Service. The Internet provides opportunity for offensive or damaging 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.
- 3.3. OTHER RATES. Additional networking, network configuration, or other technical assistance provided by the Company may be billable to Customer. Any rates and costs will be approved by Customer prior to work being performed.
- 3.4. BANDWIDTH. It is understood that pricing for telecommunications services is based on sharing of the telecommunication network. It is therefore also understood that unless indicated, this is not a dedicated connection (i.e., one which guarantees a constant uninterrupted usage at any particular level), and that the bandwidth described herein will normally be available on that shared basis. 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 (use more than that specified in paragraph 2.9 below - such use is available under separate contract). Excessive bandwidth use may result in additional charges. In the case of a dedicated connection (as identified above), this section shall not apply.
- 3.5. DESCRIPTION OF INTERNET SERVICE. The Company shall provide Customer with access to the Company internet backbone provisioned as indicated at the beginning of this addendum. Under normal situations there are no data caps or limitations, however if a customers' usage is determined to be excessive the Company reserves the right to request the customer to transition into a more appropriate package for their consumption. Customer shall be provided with one dynamic IP address. Additional or static IP addresses are available at an added monthly cost.
- 3.6. NETWORKING. Any networking necessary at Customer's location shall be provided by Customer or will be provided by the Company under a separate agreement. 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 under the terms of paragraph 3.3 of this Service Agreement). Customer is responsible to ensure the security of their local network and its connection to the Company network or equipment. The Company shall bear no responsibility for any loss of data or security breaches occurring through the connection to the Company network or equipment.
- 3.7. 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 Service Addendum and may disclose the results of such monitoring to comply with laws or regulations.
- 3.8. 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.

ARTICLE 4 – TERMS AND CONDITIONS APPLICABLE TO PHONE SERVICE

- 4.1. FEES AND RATES. All rates for Phone Service are as identified in associated Service Agreements. The rates published on the Company's website apply for interstate and international calling unless a different rate is specified in a Service Agreement, in which case, such different rate applies for the term of that Service.
- 4.2. AUTHORIZATION. Customer authorizes the Company to notify Customer's current local service providers of Customer's telecommunication choices. Customer acknowledges that (i) this authorization changes the selected service providers, (ii) each telephone number may have only one preferred provider for each service, and (iii) Customer's current local service provider may apply a charge for this change.
- 4.3. CONTINGENT UPON INTERNET SERVICE. Customer's ability to obtain the Company's Phone Services may be contingent upon Customer having a reliable internet connection. Company shall have no liability for internet jitter, latency and loss issues that are outside the company's network or control.
- 4.4. TERMINATING EXISTING LOCAL AND LONG-DISTANCE CARRIER. Customer is responsible for terminating Customer's existing local and long-distance carrier service after completion of the Company's installation of services.
- 4.5. 911 AND EMERGENCY CALLING. Customer is responsible to provide Company with accurate location information for each phone number issued. Customer is responsible to ensure compliance with any regulatory requirements for specific location information in larger buildings or multisite deployments.
- 4.6. SERVICES NOT AVAILABLE. Third party charges and incoming collect calls are not available.