

HAY COMMUNICATIONS – HOSTED PBX PHONE SYSTEM TERMS OF SERVICE NOTIFICATIONS

THIS DOCUMENT CONTAINS IMPORTANT PROVISIONS, INCLUDING THOSE REGARDING 911 ACCESS. PLEASE READ CAREFULLY.

1. **Description.** The Hay Hosted PBX system (“**VoIP Service**”) allows you to make or receive telephone calls over the Internet to or from the public switched telephone network (“**VoIP Calls**”). The nature of VoIP Calls, while appearing similar to traditional telephone calling services, creates unique limitations and circumstances, and you acknowledge and agree that differences exist between traditional telephone service and the VoIP Services, including the lack of traditional 911 services and privacy.
2. **911 Service.** Because of the unique nature of VoIP Calls, emergency calls to 911 through the VoIP Service (each a “**911 Call**”) will be handled differently than traditional phone service. The following provisions describe the differences and limitations of 911 Calls, and you hereby acknowledge and understand the differences between traditional 911 service and VoIP Calls to 911 as described below:
 - i. **Placing 911 Calls.** When you make a 911 Call, the VoIP Service will attempt to automatically route your 911 Call through a third party service provider to the Public Safety Answering Point (“**PSAP**”) corresponding to the address on record with your Account. However, due to the limitations of the VoIP System, your 911 Call may be routed to a different location than that which would be used for traditional 911 dialling. For example, your call may be forwarded to a third-party, specialized call centre that handles emergency calls. This call centre is different from the PSAP that would answer a traditional 911 call, and you may be required to provide your name, address, and telephone number to the call centre.
 - ii. **How Your Information is Provided.** The VoIP Service will attempt to automatically provide the PSAP dispatcher or emergency service operator (each a “**Dispatcher**”) with the name, address and telephone number associated with your Account. However, for technical reasons, the Dispatcher may not be able to capture or retain your name, phone number or physical location. Therefore, when making a 911 Call, you must immediately inform the Dispatcher of your location (or the location of the emergency, if different). If you are unable to speak, the Dispatcher may not be able to locate you.
 - iii. **Correctness of Information.** You are responsible for providing, maintaining and updating correct contact information (including name address and telephone number) with your Account. If you do not correctly identify the actual location where your service access device is located, or if your Account information has recently changed, 911 Calls may be misdirected to an incorrect Dispatcher.
 - iv. **Disconnects.** You must not disconnect the 911 Call until told to do so by the dispatcher, as the dispatcher may not have your number or contact information. If you are inadvertently disconnected, you must call back immediately.
 - v. **Connection Time.** For technical reasons, including network congestion, it is possible that a 911 Call will produce a busy signal or will take longer to connect when compared with traditional calls.
 - vi. **911 Calls May Not Function.** For technical reasons, the functionality of 911 Calls may cease or be curtailed in various circumstances, including:
 1. **Failure of Service or Service Access Device**—if your service access device fails or is not configured correctly or if your VoIP Service is not functioning for any reason, including in the event of power outage, VoIP Service outage, suspension or disconnection of your Service due to billing issues, network or Internet congestion, or network or Internet outage, in the event of a power, network or Internet outage, you may need to reset or reconfigure the Service Access Device before being able to use the VoIP Service, including for 911 Calls;
 2. **Changing Location of Service Access Device**—if you move your service access device to a location other than that described in your Account information or otherwise on record with Hay Communications; and
 3. **Use outside of Canada or the United States**—if you move your System Access Device to a location other than the United States or Canada, excluding Alaska, Hawaii, the Northwest Territories, Yukon and Nunavut.
 - vii. **Alternate Services.** If you are not comfortable with the limitations of 911 Calls, Hay Communications recommends that you terminate the Services or consider an alternate means for accessing traditional 911 services.
 - viii. **Inform Other Users.** You are responsible for notifying, and you agree to notify, any user of your VoIP Services of the nature and limitations of 911 Calls on the VoIP Services as described herein.
 - ix. **No Liability and Indemnity.** You acknowledge and agree that Hay Communications will not be liable for any service outage or inability to place 911 Calls using your VoIP Service or to access emergency service personnel due to the limitations of 911 service described herein.

- x. **Privacy.** You acknowledge that VoIP Calls and VoIP Services utilize, in whole or in part, the public Internet and third party networks to transmit voice and other communications, which transmissions may be intercepted by other parties.
- xi. **Limit on Usage Patterns.** Hay Communications reserves the right to terminate, curtail or suspend your VoIP Services if your calling patterns materially exceed average customer calling patterns under similar plans or if you breach any part of this Agreement.
- xii. **Specific Prohibitions.** You are prohibited from using any VoIP Services for: (i) automatic-dialing announcing devices and unsolicited voice and facsimile calls made for the purpose of solicitation; (ii) long-distance calls made using call forwarding and three-way calling features; or (iii) any application with continuous or excessive calling patterns, including debit card processing, for auto-dialing, remote call forwarding, telemarketing (including charitable and political solicitation and polling), fax broadcasting or fax blasting.

As mentioned in the above excerpt, customers are advised to review sections with respect to the Company's limitations of liability and indemnity. These provisions state as follows:

Limited Warranty and Indemnification

Hay Communications Service and Software is provided "as is" and "as available" without any warranties, conditions or representations of any kind about the suitability, reliability, usability, security, quality, capacity, performance, availability, timeliness or accuracy of the Services. For greater clarity, without limiting the foregoing, neither Hay Communications'

nor any of its information providers, licensors, employees, agents or affiliates represent or warrant that the Service will meet your requirements, that it will operate in combination with the software and/or services that you select to use on the Internet, that the operation of the Service will be uninterrupted and error free, that any errors will be corrected, that the Service will meet any particular criteria of quality or performance (as regards to, without limiting the generality of the aforementioned, the reasonable delays of delivery or receipt of data), that the privacy of any data, information, content or other materials transmitted by, to or through its computer and/or communication systems will be preserved, that any data or files sent by or to you will be transmitted in uncorrupted form nor that any Content, or other materials accessible through the Service, is free of viruses or other harmful elements or components. Furthermore, Hay Communications expressly disclaims all conditions, warranties and representations, express, implied or statutory, including implied conditions or warranties of merchantability, fitness for a particular purpose, durability, title and non-infringement, whether arising by usage of trade, course of dealing, course of performance or otherwise. Therefore, you assume full responsibility and risk of loss from your use or non-use of the Services.

Notwithstanding anything to the contrary in this Agreement, in no event shall Hay Communications or its affiliates and their respective officers, directors agents, employees, suppliers, resellers and distributors (collectively, the "**Entities**") be liable for any direct, indirect, special, incidental, consequential or punitive damages, or any other damages or losses whatsoever, including damages for loss of profits, goodwill, opportunity, earnings, use or data, arising directly or indirectly from or related to this Agreement or the use, non-use or installation of the Services or related components, regardless of the cause of action and even if one or more of the Entities has been advised of the possibilities of such damages or losses, including damages or losing resulting from or in any way related to the following:

- (a) VoIP Service outage, delays, errors or omissions or your inability to place VoIP Calls (including 911 Calls) using your Services or to access emergency service personnel;
 - (b) sending, receiving, not sending, not receiving, loss, deletion or alteration of any transmissions or data, including any 911 Calls, e-mail messages or telephone or VoIP transmissions, or for any transactions entered into through or using the Services, including domain name registrations, renewals and transfers;
 - (c) any suspension, curtailment, restriction, termination or other limitation placed on your Services or your Account;
 - (d) any act or omission of you or any third party, including any threatening, defamatory, obscene, offensive or illegal conduct or any infringement of another's rights, including intellectual property rights;
 - (e) any loss or damage to your equipment, software or data arising directly or indirectly out of use or non-use of the Services or any access device or related component;
 - (f) the performance of the Internet or the Services;
 - (g) the content or accuracy of any material, information or data (including any Software) related to this agreement or viewed, downloaded, accessed or transmitted using, over or through the Internet or the Services, including material which infringes the rights of others or otherwise violates laws or regulations;
 - (h) delays, errors, interruptions, mistakes, omissions, non-delivery, incorrect delivery, viruses, Trojan horses, spyware, spam or defects in the transmission of any information, material or data over or through the Entities' systems or networks or the systems or networks of third parties; and
 - (i) installation or maintenance of the Services, whether by you, the Entities or third parties, including if an installation appointment for the services is missed, either by the Entities or by any third party installer.
- You agree to indemnify, defend and hold harmless the Entities for any claims, awards, actions, proceedings, damages, losses, judgments, costs, charges, expenses and other liabilities incurred by or made against any of the Entities which result from or relate to (a) any final determination that the data, information and/or

content stored, received or transmitted, now or in the future, to, through or from, as the case may be, your account or your Services infringes trade-mark, trade secret, copyright, patent or third party intellectual property rights, (b) any failure or outage of the Service, including those related to 911 Calls, (c) access to or use, by you or any third party, of the Services, any system access device or related components or your Account, or (d) any of your acts or omissions, including breach or non-performance of this Agreement and any violation of third party rights. You agree that the Entities will not be responsible for damages and expenses related to the violation of this Agreement resulting from the use by you or any user of your Account or in connection with your use or the use of the Service by another user of your Hay Communications account and you agree to hold Hay Communication harmless in that respect. This indemnification shall survive the termination of this Agreement.

Limitation of Liability

Without restricting the foregoing, circumstances may arise in which you or another party is entitled to recover damages from one or more of the Entities. In such instance, the aggregate liability of the Entities for damages is limited to actual and direct damages up to and not exceeding \$100.