

Hay Communications Co-operative Limited High Speed Internet Agreement

- 1. General:** This Agreement is made by and between Hay Communications Co-operative Limited (Hay) located at 72863 Blind Line, Hay Township, Ontario and Customer ("Customer") as identified below. This Agreement shall be effective on the date that it is executed by Hay following Customer's execution ("Effective Date"). This Agreement sets forth the terms and conditions pursuant to which Hay shall provide the "Service" (as hereinafter defined) to Customer. As used herein, "Service" shall refer to Hay's High Speed Internet Access which shall consist of high speed access to Hay's Internet Protocol ("IP") network, which access shall be provided via a dedicated local analog copper loop or fibre connection between a high speed modem (provided and owned by Hay) at the Customer's premise and the applicable local exchange carrier's serving wire center. The Service shall afford connectivity, via Hay's IP network, between a Customer location and the Internet.
- 2. Rates and Charges:** Customer agrees to pay all applicable rates and charges set by Hay set forth and incorporated by reference of set monthly charges and onetime charges. In addition to such rates and charges, Customer shall be responsible for any and all fees and taxes, if any, which may be imposed by any Internet registration authority, in connection with the registration and maintenance of Customer's domain name(s) or Internet addresses, if any. Billing for the recurring component of the Service shall be monthly in advance. Payment for the non-recurring component of the Service, including initial set-up and installation fees, shall be billed on your monthly telephone statement. Charges shall be due upon Customer's receipt of invoice. Hay reserves the right to change or modify the rates and charges for the Service, or eliminate or modify certain components of the Service. In the event of such a modification or elimination with respect to the Service, Customer will pay all applicable taxes, as well as duties or levies, arising in connection with the Service. Customer's execution of this Agreement signifies Customer's acceptance of Hay's initial and continuing credit review and approval. Hay reserves the right to withhold implementation of service pending completion of Hay's credit review and Hay may condition initiation of service on its receipt of a deposit or such other means to establish reasonable assurance of payment.
- 3. Term and Termination:** (a) This Agreement; shall be effective upon the Effective Date and continue until termination; its "Term" shall commence on the date upon which, with respect to the Service ordered, the Service is made available for use by Customer, shall continue for a minimum period of six (6) months and may be terminated by either party at the end of its Term by giving written notice at least sixty (60) days prior thereto, but in the absence of such notice, service shall continue automatically until either party terminates by giving written notice at least sixty (60) days prior and the equipment is returned to Hay's Business office by the Customer. In the event Customer terminates the Agreement prior to the conclusion of the Term, Customer shall pay to Hay all charges for Service provided through the effective date of such cancellation plus a cancellation charge determined as follows: (I) If Customer requests termination of service prior to this three (3) month agreement, then the cancellation charge shall be an amount equal to one hundred percent (100%) of the balance of the monthly Service remaining up to the first three (3) months (then in effect at the time of cancellation). It is agreed that Hay's charges if Service is cancelled prior to the completion of the Term are intended to recover costs and are not intended as a penalty. (b) Hay may terminate this Agreement and/or cease or suspend the provision of the Service upon default of the Customer. Default includes: (i) the failure to pay any amount when due, (ii) the filing of a petition in bankruptcy by or against Customer; and (iii) any material default of this Agreement including but not limited to violations (as hereinafter defined) or conduct that Hay, in its sole discretion, believes may subject Hay to civil or criminal litigation, charges and/or damages. If Hay has suspended the Service pursuant to this Section 3(b), Hay shall require a reconnection fee of \$60.00 in order to resume Service. When the service is suspended it means that modem activity is no longer accepted. Termination shall not relieve Customer of their obligation to pay all fees for Service accrued and owing up to and including the date of termination or otherwise payable pursuant to Section 3(a) above, nor shall it preclude Hay from pursuing any other remedies available to it, at law or in equity. (c) In the event a law or regulatory action prohibits, substantially impairs or makes impractical the provision of Service under this Agreement, as determined by Hay, Hay may, at its option and without liability, terminate this Agreement or modify the Service or the terms and conditions of this Agreement in order to conform to such action. When the service is terminated, all mail, files and directories associated with it are erased.

4. **Inactive Email Accounts:** If a customer does not log in to their provided Hay Communications email account for a period of 12 consecutive months, the account will be considered inactive and may be permanently closed without further notice. Customers are responsible for regularly accessing their email to avoid loss of data or access.
5. **Rights and Obligations of Customer:** Customer represents that (a) it has full right and authority to enter into this Agreement; (b) it will not use the Service in any manner which is in violation of any law or governmental regulation, (c) the "Customer Data" (as hereinafter defined) will not violate or infringe the rights of others, including, without limitation, any patent, copyright, trademark, trade dress, trade secret, privacy, publicity, or other personal or proprietary right; (d) the Customer Data will not include indecent or obscene material or constitute a defamation or libel of Hay or any third party and will not result in the obligation of Hay to make payment or restitution of any kind of any third party licensing fees, (e) it will comply with all relevant export and encryption laws and regulations of any government laws, (f) use this service as a platform for gaining unauthorized access to or doing mischief on other systems, (g) bulk mailing or bulk postings to news, (h) tampering with or violating the privacy of other Customers' files, (i) overuse of system resources including spawning and spamming excess processes or processes that persist continuously; and (j) hosting internet or FTP content. For purposes of this Section 4, "Customer Data" shall mean the text, data, images, sounds, photographs, illustrations, graphics, programs, code and other materials transmitted through the Service hereunder.
6. **Equipment and/or Software:** Customer shall be solely responsible for the installation, operation, maintenance, use and compatibility of equipment or software and Hay shall have no responsibility or liability in connection therewith. In the event that equipment or software impairs Customer's use of any Service: Customer shall nonetheless be liable for payment for all Service provided by Hay. Customer shall cooperate with Hay in setting the initial configuration for its equipment's interface with the Service and comply with Hay's instructions in connection therewith. The Customer agrees that the modem(s) and other equipment provided remain the property of Hay Communications Co-operative Limited and termination of service will only take effect when all applicable equipment is returned to Hay. If equipment such as modems, access points or routers are NOT returned in complete good repair and working order a charge of up to \$250.00 per unit, plus taxes will be applied to Customer's account and may be applied to the credit card provided by Customer. It is required that the Customer provides surge protection electrical connections. Reimbursement to Hay Communications Co-operative Limited for lost, stolen or damaged equipment, including modem(s) (lightning, electrical and other such surges) is the responsibility of the Customer. The reimbursement cost is up to \$250.00 per unit, plus taxes and is subject to change.
7. **Rights and Obligations of Hay:** (a) Hay, at its sole discretion, may secure domain names and assign Internet address space (subject to reasonable availability) for the benefit of Customer during the Term, and Hay will route those addresses on Hay's network; it being understood and agreed that neither Customer nor any of its "Users" shall have the right to route these addresses. Customer understands and agrees that it shall have no ownership interest in any IP address which Hay obtains on Customer's behalf and that Hay shall retain ownership of all such IP addresses, and upon termination of the Agreement, Customer's access to and utilization of such IP addresses shall terminate. (b) Customer agrees that it is solely responsible for assessing its own computer and transmission network needs and the results to be obtained there from and Hay exercises no control whatsoever over the merchandise, information and services offered or accessible on the Internet. Hay shall use commercially reasonable efforts to (i) monitor its network and its interconnection to other networks and (ii) maintain its network, including interconnections, in an operational state (except during scheduled maintenance). Customer assumes total responsibility for Customer's use and users' use of the service, software or equipment provided by Hay, if any, and the Internet. Customer understands and agrees further that the internet (1) contains materials some of which are sexually explicit or may be offensive and (2) is accessible by persons who may attempt to breach the security of Hay's and/or Customer's network. Hay has no control over and expressly disclaims any liability or responsibility whatsoever for such materials or actions and Customer and Customer's users access the service at Customer's own risk. Except as specifically set forth herein, the service and related software and/or equipment provided by Hay, if any, are provided on an "as is" and "as available" basis without warranties of any kind, either express or implied, including but not limited to warranties of title, noninfringement or implied

warranties of merchantability or fitness for a particular purpose. No advice or information given by Hay, its affiliates or its contractors or their respective employees shall create a warranty.

- 8. Limitation of Liability:** To the maximum extent permitted by law, in no event shall Hay, its affiliates or agents be liable for any direct, indirect, incidental, special, punitive or consequential damages or lost or imputed profits or royalties, lost data or cost of procurement of substitute goods or services arising from or related to the service or this agreement whether for, among other things, breach of warranty or any obligation arising there from, and whether liability is asserted in, among other things, contract or tort (including but not limited to negligence and strict product liability) whether or not Hay has been advised of the possibility of any such loss or damage. Hay's liability hereunder shall in no event exceed an amount equal to the average monthly recurring charge paid by Customer for the service, such average monthly charge to be calculated based upon the period commencing on the effective date and concluding on the date a claim is made. Customer hereby waives any claim that these exclusions deprive it of an adequate remedy or cause this agreement to fail of its essential purpose. The foregoing sets forth Customer's exclusive remedy for breach of this Agreement by Hay.
- 9. Indemnity:** Customer agrees to defend, indemnify and hold Hay and its affiliates harmless from any and all liabilities, costs and expenses, including reasonable attorneys' fees, related to or arising from: (a) any breach of this Agreement by Customer or Users; (b) the use of the Service or the Internet or the placement or transmission of any information, software or other materials on the Internet by Customer or Users, including but not limited to any Customer Data; (c) acts or omissions of Customer, Customer's agents or Contractors in connection with, among other things, the setup, installation, maintenance, presence, use or removal of equipment or software connected or to be connected to the Service; and (d) claims for infringement of any third party proprietary right, including copyright, patent, trade secret and trademark rights, arising from the use of any services, equipment and software.
- 10. Non-Solicitation of Employees:** Customer shall not, during the Term of this Agreement and for a period of one year thereafter, directly or indirectly solicit, employ, offer to employ, nor engage as a consultant, any employee of Hay with whom Customer had contact pursuant to this Agreement, without the prior written consent of Hay.
- 11. Non-Disclosure:** Except with respect to information in the public domain or which is legally required to be disclosed, Customer shall not disclose any of the terms and conditions of this Agreement to any third party during the Term and for a period of twelve (12) months thereafter.
- 12. Assignment:** Customer shall not assign this Agreement or, resell the right to use the Service, without the prior written consent of Hay.
- 13. The Customer understands that violations of these Terms and Conditions is unethical and may involve criminal offence.** When Hay becomes aware of such violations it is obliged to investigate and, should it be necessary, inform and cooperate with appropriate authorities in their investigations. These published Terms and Conditions supersede all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any order submitted. Upon notice to Customers via e-mail, Hay may modify these terms and conditions, amplify them, as well as change or discontinue services offered. Use of Service constitutes acceptance of these Terms and Conditions. If these Terms and Conditions do not meet with the Customers' agreement, that Customer should contact Hay Communications Co-operative Limited to initiate account closure.
- 14. Miscellaneous:** By signing this agreement, or by continuing to use Hay Communications' internet services, you acknowledge that you have read, understood and agree with the terms, conditions, rules and policies outlined in this agreement.