

COX Business Services

A02-134

Commercial Services Agreement

Customer Account Number:	ORIGINAL	System Address
Federal Tax ID Number:		
Contract Number:		

Legal Company Name: City of Peoria	Name: Dan Zenko
Service Street Address: 8401 W Monroe St. Room 230	Business Phone Number: 623-773-7147
City/State/Zip: Peoria, AZ 85345	Business Fax Number: 623-773-7270
Requested Service Date:	Additional Contact Number (optional):
Billing Street Address (if different from service address)	E-mail Address (optional):
Street Address:	
City/State/Zip:	

Cox shall provide the following Services and equipment and Customer agrees to pay the fees and charges set forth below:

(Customer Initials)

Cox Business Internet	1	120months	59.00/month	\$145.00
256 down/ 256 up				

modem	1	N/A		
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Telephone/Voice/Access

DZ (Customer Initials)

1.	
2.	
3.	
Address of Origination Point A	Address of Termination Point B

Internet Services

DZ (Customer Initials)

1.	1.
2.	2.

Video

DZ (Customer Initials)

Remote:

Special Conditions

Installation will be completed within 14 business days upon receipt of entry (ROE).

The undersigned represents that he/she is the Customer or is the Authorized Customer Representative identified above and is authorized to sign this Agreement on behalf of Customer for the services in this Agreement and that the customer information is true and correct. This Agreement binds Customer to the Rates, Terms and Conditions of Service applicable to each of the services selected above, including any termination penalties that may apply. Customer understands that telephone services selected above are provided by Cox Arizona Telcom, LLC, and that such services are generally subject to rates, terms and conditions contained in tariffs on file with, as well as the regulations of, the Arizona Corporation Commission and/or the Federal Communications Commission, and that such regulations may change from time to time. If Customer subscribes to or uses State-to-State and/or International telecommunications services from Cox after July 31, 2001, such services shall be provided pursuant to the Cox Customer Service Agreement which may be found at our web site at www.cox.com/telephone/customerserviceagreement.asp. All Services are subject to the Terms and Conditions attached hereto. Internet, Data, Web Hosting and/or Web Conferencing, CoxMail(sm) E-Mail Services, if selected by Customer, are subject to additional terms and conditions contained in Acceptable Use Policies and Customer acknowledges receipt of these by signing below. The undersigned authorizes Cox to check credit and this Agreement is subject to credit approval.

SIGNATURES ON LAST PAGE OF AGREEMENT

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A. Terms and Conditions for Regulated Telephone Services.

1. **Tariffs** The terms and conditions of telephone service provided to Customer under this Agreement are contained in tariffs on file with state and/or federal regulatory authorities. These tariffs shall govern the provision of telephone service, and Cox may amend such tariffs and telephone service shall be subject to such tariffs, as amended.

2. **Telephone Numbers** The Customer has no property right in the telephone number associated with the telephone service provided by Cox. Any telephone number designated by Cox in advance of the activation of Cox telephone service is subject to change by Cox. Additional terms and conditions regarding telephone numbers are contained in Cox tariff(s) on file with regulatory authorities.

3. **State-to-State and International Services** If Customer subscribes to or uses state-to-state and/or International telecommunications Services from Cox after July 31, 2001, such Services shall be provided pursuant to the terms and conditions contained in Cox Customer Service Agreement which may be found at our web site: www.cox.com/telephone/customerserviceagreement.asp.

B. Terms and Conditions of Data, Internet, Web Hosting, Web Conferencing, Video and unregulated Services.

1. **Payment** Customer shall pay for all monthly service charges, plus one-time set-up, installation and/or construction as invoiced from Cox. Any amount not received by the due date shown on the applicable bill will be subject to interest or a late charge at the maximum rate allowed by law. Customer shall pay any sales, use, gross receipts, excise, access, universal service fund assessments, 911 fees, franchise fees, bypass or other local, state and Federal taxes or charges imposed on the use of the Services. Taxes will be separately stated on the Customer's invoice.

2. **Service and Equipment** Cox shall provide Customer with the Services and Equipment identified on the first page of this Agreement. Customer is responsible for damage to any Cox equipment. Customer may use the Services for any lawful purpose, provided that Customer such purpose (a) does not interfere or impair the Cox network, equipment or facilities and/or (b) complies with the applicable Acceptable Use Policies ("AUP") which are incorporated herein by reference. Customer shall use the equipment only for the purpose of receiving the Services. Customer shall not make any connections to the equipment which are not expressly authorized in writing by Cox. Customer shall not permit tampering, altering or repair of the equipment by any person other than Cox's authorized personnel. Unless provided otherwise herein, Cox shall use reasonable efforts to maintain the Services in accordance with applicable performance standards, however, Cox shall have no responsibility for the maintenance or repair of facilities and equipment it does not furnish. For Cox Internet Services, bandwidth speed options may vary. Customer may not always receive or obtain optimal bandwidth speeds and Cox network management needs may require Cox to modify upstream and downstream speeds. Use of the data, Internet, web conferencing/web hosting Services shall be subject Cox AUP and the AUP is online at www.coxhosting.com/aup. Web hosting Customers may view their AUP by clicking on the Control panel. The AUPs may be amended from time to time during the Term of this Agreement. Customer continued use of the Services following an amendment shall constitute acceptance. Cox is not responsible for the networks or facilities of third parties which may be necessary to provide Service.

3. **Service Date and Term** The effective date of this Agreement shall be the earlier of when Customer and Cox execute this Agreement or when Customer begins receiving Services from Cox. Cox shall use reasonable efforts to make the Services available by the requested service date. Cox shall not be liable for any damages whatsoever resulting from delays in meeting any service dates due to delays resulting from construction or for reasons beyond its control.

4. **Customer Responsibilities** Customer is responsible for arranging all necessary rights of access for Cox within the Service premises, including space for cables, conduits, and equipment as necessary for Cox-authorized personnel to install, repair, inspect, maintain, replace or remove any and all facilities and equipment provided by Cox. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for Cox's

equipment. Customer is responsible for determining that Customer's use of the Service complies with all applicable laws and ordinances, as well as applicable leases and other contractual agreements between Customer and third parties. If Customer engages in a public performance of any copyrighted material contained in any of the Services provided under this Agreement, the Customer, and not Cox, shall be responsible for obtaining any public performing licenses. Customer is responsible for ensuring that Customer's equipment is compatible for the Services selected and with the Cox network.

5. **Equipment** Unless otherwise provided herein, Customer agrees that Cox shall retain all rights, title and interest to facilities and equipment installed by Cox thereunder and that Customer shall not create or permit to be created any liens or encumbrances on such equipment. Internal Wiring shall not be considered equipment and shall become the property of Customer upon initiation of Service. Cox shall install equipment necessary to furnish the video Services to Customer. Customer shall not modify or relocate equipment installed by Cox or install any other equipment, including servers in connection with data/Internet without the prior written consent of Cox. For Cox-owned equipment, Customer shall, at the expiration or termination of this Agreement, return the equipment in good condition, ordinary wear and tear resulting from proper use excepted. In the event the equipment is not returned to Cox in good condition, Customer shall be responsible for the value of such equipment. Cox shall repair any equipment owned by Cox at no charge to Customer provided that damage is not due to misuse, abuse or other disaster including acts of God. If additional equipment, including but not limited to, monitors, computers, circuits, software or other devices, are required by Customer to use the Services, Customer shall be responsible for such equipment.

6. **Resale of Service** Unless authorized in writing by Cox, Customer may not resell any portion of the Service to any other party; provided, however, Customer may, with Cox's prior written consent, resell web hosting for third parties through the Services. Customer shall be responsible for any software and content displayed and distributed by Customer or Customer's web hosting customers, if any.

7. **Default** If Customer fails to comply with any material provision of this Agreement, including, but not limited to failure to make payment as specified, then Cox, at its sole option, may elect to pursue one or more of the following courses of action upon proper notice to Customer as required by tariff or applicable law: (i) terminate service whereupon all sums then due and payable shall become immediately due and payable, (ii) suspend all or any part of Services, and/or (iii) pursue any other remedies, including reasonable attorneys' fees, as may be provided at law or in equity, including the applicable termination liabilities.

8. **IP Address and Domain Name Registration** Cox will allocate IP addresses to Customer according to InterNIC guidelines. All IP addresses assigned by Cox must be relinquished by Customer upon the expiration, termination or cancellation of this Agreement. IP address shall be subject to the IP address AUP. If Customer requests, Cox will register an available domain name on behalf of Customer, and such registration shall be subject to rules promulgated by the domain name registrar, which may be amended from time to time. The rules are presently posted at <http://rs.internic.net/help/net/policy.html>. Customer is responsible for payment and maintenance of domain name registration.

9. **Termination** Customer may terminate video Service for any reason, upon payment for all sums for video Services rendered. Customer may terminate data, Internet, web hosting and/or web conferencing Services before the term selected by Customer on the first page of this Agreement; provided, however, if Customer terminates Service before the term selected by Customer (except for breach by Cox), or Cox terminates Services for Customer's breach of this Agreement or the AUPs, Customer may be subject to a termination liability. The termination liability shall equal 100% of the monthly recurring charges for the terminated Services multiplied by the number of full months remaining in the initial term commitment. After the initial term, this Agreement shall automatically renew on a month-to-month basis and shall be subject to terms of this Agreement. Any termination by Customer must be in writing.

10. LIMITATION OF LIABILITY. COX SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE

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TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL COX BE RESPONSIBLE FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OR THE PROVISION OF SERVICES. UNDER NO CIRCUMSTANCES WILL COX BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS ARISING FROM THIS AGREEMENT. COX 'S MAXIMUM LIABILITY TO CUSTOMER ARISING UNDER THIS AGREEMENT SHALL BE THE LESSER OF \$5,000.00 OR THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SERVICES HEREUNDER UNLESS THERE IS GROSS NEGLIGENCE OR WILFULL MISCONDUCT BY COX.

11. **Assignment** Customer may not assign, in whole or in part, this Agreement without the prior written consent of Cox, which consent may be withheld in Cox's discretion. Cox may assign this Agreement.

12. WARRANTIES EXCEPT AS PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT THE SERVICES SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

13. **INDEMNITY.** This Section Intentionally Omitted.

14. **Viruses, Content, Customer Information** Software or content obtained from the use of Service may contain viruses or other harmful features and Customer is solely responsible for protecting its equipment and software from such matters. Through the use of the Service, Customer may obtain or discover content which is offensive or illegal and Customer assumes the risk and is solely responsible for its access to such content. Cox may disclose Customer Information to law enforcement or to any Cox affiliate. Cox may disclose Customer Information to third parties provided Customer identifiable data is not disclosed.

15. **Miscellaneous** This Agreement, the tariffs, the documents referenced herein, and the AUPs constitute the entire agreement between Cox and Customer for the Services and equipment provided herein. The invalidity or unenforceability of any term or condition of this agreement shall not affect the validity of enforceability of any other provision. This Agreement may be modified, waived or amended only by a written

instrument signed by the parties; provided Cox may modify the AUP and if Customer continues to use the Service, Customer shall be bound by such AUP as modified. The rights and obligations of the parties under this Agreement shall be governed by the laws of the State of where the Services are provided. The failure by either party to exercise one or more rights provided in this Agreement shall not be deemed a waiver of the right to exercise such right in the future. Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery or by mail. If delivered by mail, notices shall be sent by any express mail service; or by certified or registered mail, return receipt requested; with all postage and charges prepaid. All notices and other written communications under this Agreement shall be addressed to the parties at the addresses on the first page of this Agreement, or as specified by subsequent written notice delivered by the party whose address has changed.

16. **Regulatory Authority** This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, administrative orders, as amended.

17. **Virtual Private Network (VPN) Service.** If Customer obtains VPN Internet Service from Cox, provision of such Service shall be contingent upon employees of Customer executing a VPN Installation and Release form. Cox reserves the right to disconnect VPN service to any employee of Customer that fails to maintain their residential video service in good standing with Cox.

18. **Infringement.** Customer shall not use the Services in any way that violates, or may violate, a third party's patent, copyright, trademark, or other intellectual property right. If Cox receives notice, or determines that Customer is violating this Paragraph 18, Cox may terminate Customer's use of the Services, unless Customer, immediately modifies its use of the Service so as to avoid the infringement or alleged infringement.

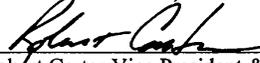
19. **Web Hosting Servers.** Cox reserves the right to select the server for Customer's web site for best performance. The Customer understands that the Services provided by Cox may be provided on a shared server. This means that one web site cannot be permitted to overwhelm the server with heavy CPU usage, for example from the use of highly active CGI scripts or chat scripts. If the Customer's web site overwhelms the server and causes complaints from other users, the Customer has outgrown the realm of shared services and will be required by Cox to relocate its web site. If the Customer refuses to comply with this Section, then Cox has the right to terminate the Services. Cox will use reasonable efforts to maintain a full time Internet presence for the Customer. The Customer hereby acknowledges that the network may, at various time intervals, be down due, but not restricted to, utility interruption, maintenance equipment failure, natural disaster, acts of God, or human error and Cox shall not be liable to customer for such outages or server downtime.

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In witness whereof, the duly authorized representations of the parties have executed this Commercial Services Agreement as set forth below:

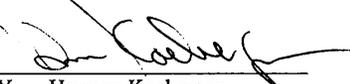
COX:

CoxCom, Inc.
Cox Arizona Telcom, LLC

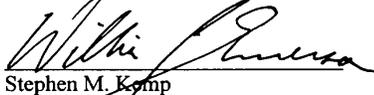

Robert Carter Vice President & General Manager
Date: _____

CUSTOMER:

CITY OF PEORIA, ARIZONA
A municipal corporation


BY: Herman Koebergen
Materials Manager

APPROVED AS TO FORM:


Stephen M. Kemp
City Attorney

ATTESTED BY:


Janice L. Graziano
City Clerk



A CON 167 02

**TELECOMMUNICATIONS FACILITIES AGREEMENT
(Commercial)**

This Telecommunications Facilities Agreement ("Agreement") is entered into this 30 day of APRIL, 2002 by and between **CoxCom, Inc., d/b/a Cox Communications Phoenix**, (hereinafter referred to as "Cox") and

City of Peoria ("Owner").

Owner holds title to, or is the authorized agent of the titleholder of, certain real property located at:

8401 W. Monroe, Peoria, AZ 85345

("Property").

and commonly known as:

Peoria City Hall

and Owner and Cox desire to enter into this Agreement for Cox to provide its telecommunications services to the Property under the terms and conditions below.

1. Grant of Access. Owner hereby grants to Cox permission to install and maintain its telecommunications distribution facilities ("Facilities") on the Property for the purpose of providing telecommunications services including voice, video and data telecommunications services ("Services") to Owner's tenants and/or other persons occupying the Property ("Tenants"). Owner further grants to Cox a non-exclusive easement together with the right to enter the Property and all common areas and facilities at any time to install, connect, disconnect, transfer, service, remove or repair the Facilities. Upon termination of Cox's provision of Services to the Property, Cox may at its option enter upon the Property and remove the Facilities. At Owner's written request, however, Cox shall remove its Facilities within thirty (30) days of the termination of this Agreement. Cox's right to enter upon the Property for the purpose of removing its Facilities shall survive termination of this Agreement.

2. Ownership of Facilities. Except for Internal Wiring, the Facilities are and shall remain the sole and exclusive property of Cox and shall not become fixtures of the Property. Internal Wiring is defined as that wiring, ports and outlets located within a commercial unit receiving Services through the building back to the demarcation point. The demarcation point in the case of telephone Services is the building's minimum point of entry, and for all other telecommunication Services is that point roughly twelve (12) inches outside of the Tenant's individual commercial unit.

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3. Obligations of Cox. Cox hereby agrees as follows:

- (i) To install the Facilities at its expense including dirt trenching, backfill, compacting and boring, cable, conduit, electronics, pedestals, splitters, and any other materials and labor reasonably necessary to install the Facilities on the property described in Exhibit "A" attached hereto. Cox shall keep the Property free of liens resulting from the installation of the Cox Facilities;
- (ii) That Owner shall have no responsibility for the Services provided by Cox to Owner's tenants or for the proper functioning of the Facilities;
- (iii) To repair any damage to Owner's landscaping, personal property or underground facilities located on the Property (including any necessary replacements), if such damage results directly from Cox's installation of the Facilities, and to restore the Property to as near its condition prior to installation of the Facilities as may be practicable to Owner's reasonable satisfaction; and
- (iv) To obtain all necessary governmental authorizations for the construction and operation of the Facilities on the Property and to perform such construction in accordance with the layout attached hereto as Exhibit "B".

4. Obligations of Owner. Owner hereby agrees as follows:

- (i) That Owner will not use or permit others to use the Facilities or any equipment that interferes with the Facilities' operation;
- (ii) That Owner will not move, disturb, alter or change the Facilities or permit any third party to do so without Cox's prior written consent;
- (iii) That this Agreement and Cox's rights granted herein shall be binding upon Owner's successors and assigns and that Owner shall notify any successor Property owner of Cox's rights under this Agreement;
- (iv) That Owner has full authority to execute this Agreement and to grant the rights herein granted and that there are no prior or existing agreements, nor will there be any agreements during the Term, that would be breached by the execution of this Agreement or by Cox's provision of the Services.
- (v) That Owner will execute a Grant of Easement as evidence of Cox's rights hereunder. Except as otherwise provided herein, upon the termination of this Agreement, Cox shall promptly execute a Release of Easement and file such Release with the County Recorders Office and provide Owner with a conformed copy of such release.
- (vi) Owner shall provide Cox with the name and phone number of Owner's representative who will provide Cox with access to any of Cox's equipment contained within locked facilities.

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Cox shall give Owner at least two (2) hours advance notice.

NAME: Patrick Hait PHONE NO.: (623) 773-7252

Alternatively, Owner shall provide an exterior location upon which Cox can install a lock box containing a key to such facilities.

5. Indemnification.

- (i) Owner agrees to indemnify, defend and hold Cox harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) arising out of or in connection with; (a) injuries or damage to Cox's employees, agents or the Facilities arising out of or in connection with the negligent acts or omissions of Owner, its agents or employees, or (b) Owner's breach of this Agreement.
- (ii) Cox agrees to indemnify, defend and hold Owner harmless from and against all claims, suits, proceedings, liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees) for personal injury or property damages arising out of or in connection with (a) Cox's negligence in the installation of the Facilities or the provision of Services, or (b) Cox's breach of this Agreement.

6. Term. This Agreement shall automatically continue for so long as Cox has Tenants taking Services within the Property. If, after twelve (12) months from the date of the last service provisioning to any Tenant as evidenced by Cox's billing records, Cox has not resumed Service to any other Tenants or Cox has not received any written request from any current or future tenant to provide Service to the Property, this Agreement will expire and Cox shall vacate and release its right in the Easement and remove its Facilities from the Property. Cox may terminate this Agreement in the event Cox is unable to continue the distribution of any Services because of any law, rule, regulation or judgment of any court, or any similar reason beyond the reasonable control of Cox, or if the applicable franchise or licenses are assigned, terminated, surrendered or revoked for any reason.

7. Default. If either party fails to perform any material condition or agreement to be performed or observed by it hereunder and such default is not cured within thirty (30) days after written notice from the other party, the non-defaulting party shall have the right to immediately terminate this Agreement.

8. Insurance. Cox shall maintain (a) comprehensive liability insurance with a policy limit of at least \$2,000,000 to protect Owner against bodily injury or property damage resulting from the installation, operation or maintenance of the Distribution System on the Premises and (b) Worker's Compensation insurance in statutory amounts. Owner shall be an "additional insured" under such general liability insurance coverage. Owner shall maintain "all risk" or "special form" property insurance which will fully protect Cox against damage or destruction to the Distribution System on a replacement cost basis with a policy limit of at least \$2,000,000. Cox shall be named as a "loss payee" for damage to the Distribution System provided by such property insurance coverage. Upon written request by the other party, each party shall provide a certificate of insurance for the foregoing policies. All policies written pursuant to this Section 8 shall be with insurers (i) licensed to do business in the state in which the Premises are located and (ii) carrying an A.M. Best rating of at least A-VIII. All policies, including any renewals thereof, shall specify that such policy cannot be canceled without at least thirty (30) days written notice to the other party.

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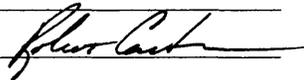
9. **Miscellaneous.** This Agreement is the entire understanding between the parties and supercedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both parties. Cox may assign this Agreement to any affiliate or any entity merging with or acquiring substantially all of the assets of Cox. Notices required to be given shall be sent by United States Certified Mail or nationally recognized courier to the address set forth below each party's signature.

Signatures to follow:

For:
CoxCom, Inc., d/b/a Cox Communications Phoenix
2095 West Pinnacle Peak Rd., Suite 110
Phoenix, AZ 85027
(623) 322-7013

Reviewed By: _____

Date: _____

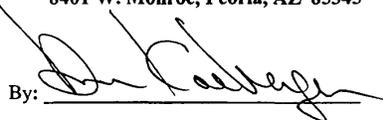
By: 

Its: Vice President & General Manager

Date: _____

For:
City of Peoria
8401 W. Monroe, Suite 230
Peoria, AZ 85345
623-773-7252

Re: Peoria City Hall
8401 W. Monroe, Peoria, AZ 85345

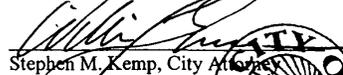
By: 

Print Name: Herman Koebergen

Its: Materials Manager

Date: 4-30-02

APPROVED AS TO FORM:


Stephen M. Kemp, City Attorney

ATTESTED BY:


Janice L. Graziano, City Clerk

A CON 16702

Exhibit "A"

Legal Description

THE NORTH 693.50 FEET OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 3 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 158 AS DEPICTED ON THE PLAT OF ALTA LOMA AS RECORDED IN BOOK 5 OF MAPS, ON PAGE 19, IN THE OFFICE OF THE RECORDER, MARICOPA COUNTY, ARIZONA;

AS RECORDED IN INSTRUMENT NUMBER 85-0109779, IN THE OFFICE OF THE RECORDER'S, MARICOPA COUNTY, ARIZONA.

**Assessor's Parcel Number
142-36-002A**

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P:\Commercial Broadband\ROE\FacilitiesAgreement1.doc\PHX/sy
Rev: 07/27/2001
Printed: 04/19/2002 / 4:53 PM
Property: «propertyaddress»
Assessor's Parcel No. «apn»

Initial 

Exhibit "B"
Site Plan

Plans will be submitted to owner if construction is necessary.

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P:\Commercial Broadband\ROE\FacilitiesAgreement1.doc/PHX/sy
Rev: 07/27/2001
Printed: 04/19/2002 / 4:53 PM
Property: «propertyaddress»
Assessor's Parcel No. «apn»

Initial 



Cox Business Services
2095 W. Pinnacle Peak Road
Suite 110
Phoenix, Arizona 85027



ACCEPTABLE USE POLICIES

&

TERMS AND CONDITIONS

COX Business Services

ACCEPTABLE USE POLICIES

This document contains Acceptable Use Policies (AUPs) for various Cox services including Data, Internet, CoxMail(sm) E-Mail, Web Hosting and Webconferencing Services ("Services"). In addition, this document contains Cox's IP Address Policy with respect to those Services. Use of any of these Cox Services shall at all times be subject to the terms and conditions of these AUPs. Web hosting customers may view their AUP by clicking on the control panel. The AUPs may be amended from time to time during the term of this agreement. Customer's continued use of the services following an amendment shall constitute acceptance. Cox is not responsible for the networks or facilities of third parties which may be necessary to provide service.

A. General Terms

The following terms and conditions in this Section apply to all Internet-related Services obtained by Customer from Cox. ANY CUSTOMER WHO DOES NOT AGREE TO BE BOUND BY THESE TERMS SHOULD IMMEDIATELY STOP USE OF THE SERVICES AND NOTIFY COX ACCOUNT MANAGEMENT SO THAT THE CUSTOMER'S SERVICE CAN BE CANCELLED. In the event of a conflict between the Commercial Service Agreement and this AUP, the terms of this AUP will govern. Questions regarding this AUP and complaints of violations of this policy can be directed to abuse@coxmail.com.

- 1. Illegal Activity.** Use of the Services for any activity that violates, or constitutes an attempt to violate, any local, state, federal or international law, order or regulation, or to engage in tortious conduct, is a violation of this Policy.
- 2. Spamming/Unsolicited Bulk E-Mail.** Sending unsolicited mail messages, including, without limitation, commercial advertising and informational e-mail is spamming and is prohibited. Customer may not post to any Usenet or other newsgroup, forum, or list articles which are illegal or inappropriate in the local forum or are off-topic according to the charter or other owner-published FAQ or description of the group or list; send unsolicited mass e-mailings, send or forward chain letters; use the Cox Service as a maildrop for responses; and/or (d) falsify user information, including forging, altering or removing electronic mail headers. Customer may not reference Cox or any related entity (e.g. by including "Organization: Cox" in the header or by listing an IP address that belongs to Cox or any related entity) in any unsolicited e-mail even if that e-mail is not sent through the Cox network.
- 3. Bandwidth Limitations.** The Customer must comply with the then current bandwidth, data storage and other limitations on the Services. Customer may not use the Services in a manner that places disproportionate burden on the network or impairs the Service received by other Customers.
- 4. End Users.** If Customer allows others (end users) to use the Service, Customer is responsible for ensuring that end users comply with this AUP. Cox may disconnect Service if an end user violates this AUP. The Customer must also make contact information publicly available, and must respond in a timely manner to any complaints. Cox shall consider any complaints regarding the Customer's end users to apply to the Customer.
- 5. Security.** The Customer is responsible for any misuse of the Services, even if the inappropriate activity was committed by an employee, Customer, consultant, guest or other individuals who have access to the Customer's system or network. Therefore, the Customer must take steps to ensure that others do not gain unauthorized access to services. This includes any third party use of unsecured mail and news servers or any other unauthorized access that results in a violation of any portion of this AUP. The Services may not be used to breach the security of another Internet user or to attempt to gain access to any other person's or entity's computer, server, software or data, without the knowledge and consent of such person or entity, including attempts to circumvent the user authentication, or probing the security of other networks. Customer may utilize scanners, sniffers and any other such security analysis tools to maintain Customer's own network as long as Customer only uses such tools with respect to Customer's own network. Cox does not under any circumstance allow Customer or unauthorized individuals to scan, probe, or use security analysis tools against the Cox network or the networks of our other customers and use of or distribution of tools designed for compromising security of non-Customer networks, such as password guessing programs, cracking tools, packet sniffers or network probing tools, is prohibited. Customer may not willfully or knowingly disrupt the Services or interfere with computer networking or telecommunications services to any user, host or network, including, without limitation, denial of service attacks, flooding of a network, overloading a service, improper seizing and abuse of operator privileges and attempts to "crash" a host. The transmission or dissemination of any information or software

which contains a virus or other harmful feature also is prohibited. The Customer is solely responsible for the security of any device you choose to connect to the Services, including any data stored on that device. If Cox detects that Customer's equipment or Customer's Internet/data transmissions contain Viruses, Trojans, Worms or similar damaging content/data that adversely affects the Cox network, the Services provided to other Cox customers, or otherwise compromises the integrity or the operation of the Cox network, Cox may disconnect Customer from Service immediately; and, in this event, Cox will make reasonable efforts to promptly contact Customers regarding the interruption of Service.

6. Customer Information. Cox and its distribution affiliates and vendors may cooperate with (i) law enforcement authorities in the investigation of suspected criminal violations, and (ii) system administrators at other Internet service providers or other cooperation may include Cox or its vendors providing the name, IP address(es), or other identifying information about a Customer. Upon termination of a Customer's Service, Cox is authorized to delete any files, programs, data and e-mail messages associated with such account. Inappropriate Content and Unacceptable Links The Customer is solely responsible for any information that is accessed through use of the Services and Cox bears no responsibility for such content. Cox and its distribution affiliates and vendors reserve the right to refuse to post or to remove any information or materials, in whole or in part, that it, in its sole discretion, deems to be offensive, indecent, or otherwise inappropriate regardless of whether such material or its dissemination is unlawful or infringes on the copyright, trademark, or other intellectual property right of a third party. By using the Services to reproduce, publish, display, transmit and distribute content, the Customer is warranting that the content complies with this AUP and authorizing Cox and its distribution affiliates to reproduce, publish, display, transmit and distribute such content as necessary for Cox to deliver the content in a timely manner. Examples of unacceptable content or links: "Pirated software", "Hackers programs or archives", "Ware sites", "Irc Bots", "Mp3".

7. Newsgroups. Messages posted to newsgroups must comply with the written charters or FAQs for those newsgroups. The Customer is responsible for determining the policies of a given newsgroup before posting to it. Posting or cross-posting the same or substantially similar messages to more than eight newsgroups is prohibited.

8. Internet Relay Chat. Cox Services may be used to participate in "chat" discussions. The Services may not be used to perform chat "flooding." Any single computer or other device connected through the Services may not maintain more than 2 simultaneous chat connections. This includes the use of automated programs, such as "bots" or "clones". Automated programs may not be used when the user is not physically present at the device. The Services may not be used to access any chat server in violation of the acceptable use policy of that server.

9. Consequence of Violation of Acceptable Use Policy. When Cox becomes aware of an alleged violation of its AUP, Cox may initiate an investigation. For violations of this AUP, Cox may, at its sole discretion, restrict, suspend, or terminate Customer's account and/or pursue other civil remedies. Although Cox has no obligation to monitor Services provided and/or the network, Cox and its various affiliates, vendors and partners reserve the right to monitor bandwidth, usage, and content from time to time to operate our Services; to identify violations of this AUP; and/or to protect the network and Cox customers. Cox prefers to advise customers of inappropriate behavior and any necessary corrective action, affiliates, in their sole discretion, believe violate this AUP, Cox or its distribution affiliates may take any responsive actions they deem appropriate. The failure of Cox or its distribution affiliates to enforce this AUP, for whatever reason, shall not be construed as a waiver of any right to do so at any time.

B. Cox Business Internet Acceptable Use Policy

This Acceptable Use Policy applies to all Cox Business Internet Services. The Cox Business Internet plans are multiple user plans with rate managed tiers for Internet access and may have simultaneous users. Customer must comply with the bandwidth, data storage and other limitations set forth in their Commercial Agreement for Services. These Services will allow the Customer to have multiple number of users on the network provided, however, that data throughput performance will be impacted by the number of users and shall be subject to the rate or speed selected by Customer and Customer's Domain Name Service (incl. vanity domain name). In addition, the Customer has the ability to add servers. Transmission speed of this Service may vary with the number of users and network management needs may require Cox to modify upstream and/or downstream speeds. Customer may not remove Cox owned and managed equipment.

C. CoxMailSM Acceptable Use Policy

This Acceptable Use Policy applies to CoxMailSM Customers and end users. Each Customer may have multiple domain accounts and each domain account may have one or more end user.

1. Forwarding/Filtering of Incoming E-Mail. Cox is not responsible for the forwarding of e-mail sent by Customer or end user where the account has been suspended or terminated. Such e-mail will either be returned to sender, ignored, deleted, or stored temporarily at Cox's sole discretion. As owner of the equipment and other resources utilized to provide services, Cox has the legal right to block electronic communications from other entities on the

Internet. Whenever possible, the party being blocked shall be made aware of such action before it occurs, however, Cox has the right to disable immediately any account in order to forestall further abuse or damage to e-mail systems. Should this occur, the Customer shall be notified as soon as possible. Unsolicited advertisements or solicitations sent from other networks which reference e-mail accounts hosted at Cox shall be treated as if they originated from the account referenced, unless there is evidence that the message originated with some unrelated party.

2. Customer Information. Cox will not release any personally identifiable information regarding our Customers (excepting that which is public knowledge, such as the InterNIC's WHOIS database) or their end users to any third party except upon presentation of (a) a subpoena issued by a government entity in a civil or criminal investigation or litigation; (b) a civil investigative demand issued by a government entity; or (c) a court order. The Customer may release such information based upon its sole judgment as to the validity of any such order, and Cox's determination shall be deemed final, conclusive and acceptable to Customer.

D. Mass Mailing Acceptable Use Policies

This AUP is applicable to mass mailings by Customers, or 3rd parties contracted on behalf of Customers to send mass mailings to Cox hosted end users. Cox's mass mailing policy is designed to maintain Service quality by managing the process in a bandwidth-friendly manner. "Opt-In" Mailings are those sent to more than 150 users by either Cox Customers or their 3rd party partners to any group of end users. Opt-In means that end user has signed up for mailings voluntarily. Before Customer or its end users engage in mass mailings, Customer must contact massmailing@coxmail.com and comply with all instructions and requirements outlined by Cox before Customer may engage in mass mailings. Failure to comply with this requirement is a violation of this AUP.

E. Cox IP Address Policy

Cox's IP address policy is based on RFC 2050 and the American Registry for Internet Numbers (ARIN) guidelines for Internet service providers; provided, however, that Cox may allocate IP addresses in any manner in which Cox determines, in its sole discretion, is reasonable for the operation of its Internet business. Please contact Cox for any questions regarding IP address rules and policies. Cox will allocate IP addresses to customer according to InterNIC guidelines. All IP addresses assigned by Cox must be relinquished by Customer upon the expiration, termination or cancellation of Commercial Services Agreement. IP address shall be subject to the IP address AUP. If Customer requests, Cox will register an available domain name on behalf of Customer, and such registration shall be subject to rules promulgated by the domain name registrar, which may be amended from time to time. The rules are presently posted at <http://rs.internic.net/help/net/policy.html>. Customer is responsible for payment and maintenance of domain name registration.

F. Web Hosting/Webconferencing Acceptable Use Policy

This Acceptable Use Policy applies to Cox Web Hosting or Webconferencing Services. Cox reserves the right to add, delete, or modify any provision of this Policy at any time without notice. Any party seeking to report any violations of the Cox AUP may contact Cox via e-mail: abuse@coxhosting.com.

1. System and Network Security. Cox will not change passwords to any account without proof of identification, that is satisfactory to Cox, and that may include written authorization with signature. In the event of any partnership dissolution, divorce, corporate reorganization, or other legal proceeding involving Customer and the Service, Cox may put the account on hold and suspend services until the situation has been resolved to Cox's reasonable satisfaction. Under no circumstances will Cox be liable for any losses incurred by Customer during this time of determination of ownership, or otherwise. Customer is responsible for all accounts, sub-accounts, and alternative account names associated with the Customer's principal account. The Customer is responsible for ensuring full compliance by all users of that account with Customer's obligations under the Agreement and this AUP. A Customer account may not be transferred without prior written approval from Cox. The Customer is responsible for maintaining the confidentiality of his/her password. In the event of a breach of security through the Customer's account, the Customer will be liable for any unauthorized use of the Cox services, including any damages resulting therefrom, until the Customer notifies Cox's Customer care staff.

2. Misuse of System Resources. It is a violation of this policy to employ posts or programs which consume excessive CPU time or storage space; to permit the use of mail services, mail forwarding capabilities, POP accounts, or auto responders other than for their Customer's account; or to resell access to CGI scripts installed on our servers. Cox shall determine in its sole discretion whether Customer is misusing system resources.

3. Servers. A user shall not use another site's mail server to relay mail without the express permission of the site. If the Customer sells or resells advertising or web space to a third party then the Customer will be responsible for the contents of that advertising and the actions of that third party. Cox has the absolute right to reject any advertising or other third party content that is illegal, offensive or otherwise in breach of the then current AUP for Web Hosting. If the

Customer refuses to remove any advertising or other third party content deemed objectionable by Cox, Cox may terminate the Services.

A. Terms and Conditions for Regulated Telephone Services.

1. **Tariffs** The terms and conditions of telephone service provided to Customer under this Agreement are contained in tariffs on file with state and/or federal regulatory authorities. These tariffs shall govern the provision of telephone service, and Cox may amend such tariffs and telephone service shall be subject to such tariffs, as amended. Customer must disclose to Cox if Customer intends to use the Services in connection with payphone service.

2. **Telephone Numbers** The Customer has no property right in the telephone number associated with the telephone service provided by Cox; provided, however, if Customer ports a telephone number from another carrier to Cox, Cox will use such number with Customer's telephone Service. Any telephone number designated by Cox in advance of the activation of Cox telephone service is subject to change by Cox. Additional terms and conditions regarding telephone numbers are contained in Cox tariff(s) on file with regulatory authorities.

3. **State-to-State and International Services** If Customer subscribes to or uses state-to-state and/or International telecommunications Services from Cox, such Services shall be provided pursuant to the terms and conditions contained in Cox Customer Service Agreement which may be found at our web site: www.cox.com/telephone/customerserviceagreement.asp.

B. Terms and Conditions of Data, Internet, Web Hosting, Web Conferencing, Video and unregulated Services.

1. **Payment** Customer shall pay for all monthly service charges, plus one-time set-up, installation and/or construction charges. Unless stated otherwise herein, monthly charges for Services shall begin upon installation of Service, and installation charges, if any, shall be due upon completion of installation. Any amount not received by the due date shown on the applicable bill will be subject to interest or a late charge at the maximum rate allowed by law. If applicable to the Service, Customer shall pay sales, use, gross receipts, excise, access, universal service fund assessments, 911 fees, franchise fees, bypass or other local, state and Federal taxes or charges imposed on the use of the Services. Taxes will be separately stated on the Customer's Invoice.

2. **Service and Installation** Cox shall provide Customer with the Services and Equipment identified on the first page of this Agreement. Customer is responsible for damage to any Cox equipment. Customer may use the Services for any lawful purpose, provided that such purpose (a) does not interfere or impair the Cox network, equipment or facilities and/or (b) complies with the applicable Acceptable Use Policies ("AUP") which are incorporated herein by reference. Customer shall use the equipment only for the purpose of receiving the Services. Customer shall not make any connections to the equipment which are not expressly authorized in writing by Cox. Customer shall not permit tampering, altering or repair of the equipment by any person other than Cox's authorized personnel. Unless provided otherwise herein, Cox shall use reasonable efforts to maintain the Services in accordance with applicable performance standards, however, Cox shall have no responsibility for the maintenance or repair of facilities and equipment it does not furnish. For Cox Internet Services, bandwidth speed options may vary. Customer may not always receive or obtain optimal bandwidth speeds and Cox network management needs may require Cox to modify upstream and downstream speeds. Use of the data, Internet, web conferencing/web hosting Services shall be subject to the Cox AUP and the AUP is available online at www.cox.business.com/AcceptableUsePolicy1.11.pdf. Web hosting Customers may view their AUP by clicking on the Control panel. The AUPs may be amended from time to time during the Term of this Agreement. Customer's continued use of the Services following an amendment shall constitute acceptance. Cox is not responsible for the networks or facilities of third parties which may be necessary to provide Service.

3. **Service Date and Term** This Agreement shall be effective upon execution by the parties. Services shall be provided for the applicable term set forth on the first page of this Agreement. Cox shall use reasonable efforts to make the Services available by the requested service date. Cox shall not be liable for any damages whatsoever resulting from delays in meeting any service dates due to delays resulting from construction or for reasons beyond its control.

4. **Customer Responsibilities** Customer is responsible for arranging all necessary rights of access for Cox within the Customer's premises, including space for cables, conduits, and equipment as necessary for Cox-authorized personnel to install, repair, inspect, maintain, replace or remove any and all facilities and equipment provided by Cox. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for Cox's equipment. Customer shall use the Services in compliance with all applicable laws and ordinances, as well as applicable leases and other contractual agreements between Customer and third parties. If Customer engages in a public performance of any copyrighted material

contained in any of the Services provided under this Agreement, the Customer, and not Cox, shall be responsible for obtaining any public performing licenses. Customer is responsible for ensuring that Customer's equipment is compatible for the Services selected and with the Cox network.

5. **Equipment** Unless otherwise provided herein, Customer agrees that Cox shall retain all rights, title and interest to facilities and equipment installed by Cox thereunder and that Customer shall not create or permit to be created any liens or encumbrances on such equipment. Internal Wiring shall not be considered equipment and shall become the property of Customer upon initiation of Service. Cox shall install equipment necessary to furnish the video Services to Customer. Customer shall not modify or relocate equipment installed by Cox or install any other equipment, including servers in connection with data/Internet without the prior written consent of Cox. For Cox-owned equipment, Customer shall, at the expiration or termination of this Agreement, return the equipment in good condition, ordinary wear and tear resulting from proper use excepted. In the event the equipment is not returned to Cox in good condition, Customer shall be responsible for the value of such equipment. Cox shall repair any equipment owned by Cox at no charge to Customer provided that damage is not due to misuse, abuse or other disaster including acts of God. If additional equipment, including but not limited to, monitors, computers, circuits, software or other devices, are required by Customer to use the Services, Customer shall be responsible for such equipment.

6. **Resale of Service** Unless authorized in writing by Cox, Customer may not resell any portion of the Service to any other party; provided, however, Customer may, with Cox's prior written consent, resell web hosting for third parties through the Services. Customer shall be responsible for any software and content displayed and distributed by Customer or Customer's web hosting customers, if any.

7. **Default** If Customer fails to comply with any material provision of this Agreement, including, but not limited to failure to make payment as specified, then Cox, at its sole option, may elect to pursue one or more of the following courses of action upon proper notice to Customer as required by tariff or applicable law: (i) terminate service whereupon all sums then due and payable shall become immediately due and payable, (ii) suspend all or any part of Services, and/or (iii) pursue any other remedies, including reasonable attorneys' fees, as may be provided at law or in equity, including the applicable termination liabilities.

8. **IP Address and Domain Name Registration** Cox will allocate IP addresses to Customer according to InterNIC guidelines. All IP addresses assigned by Cox must be relinquished by Customer upon the expiration, termination or cancellation of this Agreement. IP address shall be subject to the IP address AUP. If Customer requests, Cox will register an available domain name on behalf of Customer, and such registration shall be subject to rules promulgated by the domain name registrar, which may be amended from time to time. The rules are presently posted at <http://rs.internic.net/help/net/policy.html>. Customer is responsible for payment and maintenance of domain name registration.

9. **Termination** Customer may terminate video Service for any reason, upon payment for all sums for video Services rendered. Customer may terminate data Internet, web hosting and/or web conferencing Services before the end of the term selected by Customer on the first page of this Agreement; provided however, if Customer terminates Service before the term selected by Customer (except for breach by Cox), or Cox terminates Services for Customer's breach of this Agreement or the AUPs, Customer may be subject to a termination liability. The termination liability shall equal 100% of the monthly recurring charges for the terminated Services multiplied by the number of full months remaining in the initial term commitment. After the initial term, this Agreement shall automatically renew on a month-to-month basis and shall be subject to terms of this Agreement. Any termination by Customer must be in writing.

10. **LIMITATION OF LIABILITY.** COX SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL COX BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO

ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OR THE PROVISION OF SERVICES. UNDER NO CIRCUMSTANCES WILL COX BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS ARISING FROM THIS AGREEMENT. COX'S MAXIMUM LIABILITY TO CUSTOMER ARISING UNDER THIS AGREEMENT SHALL BE THE LESSER OF \$5,000.00 OR THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SERVICES HEREUNDER.

11. **Assignment** Customer may not assign, in whole or in part, this Agreement without the prior written consent of Cox, which consent may be withheld in Cox's discretion. Cox may assign this Agreement and Service may be provided by one or more legally authorized Cox affiliates.

12. **WARRANTIES** EXCEPT AS PROVIDED HEREIN, THERE ARE NO AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT THE SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

13. **INDEMNITY** Customer shall indemnify and hold Cox and its respective affiliates, subcontractors, employees or agents harmless (including payment of reasonable attorneys fees) from and against any claim, actions or demands relating to or arising out of Customer's use of the Service including without limitation (i) any content or software displayed, distributed or otherwise disseminated by the Customer, its employees, or users of the Services; (ii) any claim that Customer's use of the Service including the registration and maintenance of Customer's selected domain name(s), infringes on the patent, copyright, trademark or other intellectual property right of any third party; (iii) any malicious act or act in violation of any laws committed by Customer, its employees or users using the Services; and (iv) violation by Customer, its employees or authorized users of the Cox AUPs.

14. **Viruses, Content, Customer Information** Software or content obtained from the use of Service may contain viruses or other harmful features and Customer is solely responsible for protecting its equipment and software from such matters. Through the use of the Service, Customer may obtain or discover content that is offensive or illegal and Customer assumes the risk and is solely responsible for its access to such content. Cox may disclose Customer information to law enforcement or to any Cox affiliate. Cox may disclose Customer information to third parties provided Customer identifiable data is not disclosed.

15. **Miscellaneous** This Agreement, the tariffs, the documents referenced herein, and the AUPs constitute the entire agreement between Cox and Customer for the Services and equipment provided herein. The invalidity or unenforceability of any term or condition of this Agreement shall not affect the

validity of enforceability of any other provision. This Agreement may be modified, waived or amended only by a written instrument signed by the parties; provided Cox may modify the AUP and if Customer continues to use the Service, Customer shall be bound by such AUP as modified. The rights and obligations of the parties under this Agreement shall be governed by the laws of the State or Commonwealth where the Services are provided. The failure by either party to exercise one or more rights provided in this Agreement shall not be deemed a waiver of the right to exercise such right in the future. Notices required by this Agreement shall be in writing and shall be delivered either by personal delivery or by mail. If delivered by mail, notices shall be sent by any express mail service; or by certified or registered mail, return receipt requested; with all postage and charges prepaid. All notices and other written communications under this Agreement shall be addressed to the parties at the addresses on the first page of this Agreement, or as specified by subsequent written notice delivered by the party whose address has changed.

16. **Regulatory Authority-Force Majeure** This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, and administrative orders, as amended. In no event shall either party have any claim against the other for failure of performance if such failure is caused by acts of God, natural disasters including fire, flood, or winds, civil or military action, including riots, civil insurrections or acts of terrorists or the taking of property by condemnation.

17. **Virtual Private Network (VPN) Service.** If Customer obtains VPN Internet Service from Cox, provision of such Service shall be contingent upon employees of Customer executing a VPN Installation and Release form. Cox reserves the right to disconnect VPN service to any employee of Customer that fails to maintain their residential video service in good standing with Cox.

18. **Software License.** Cox grants Customer a limited, nonexclusive, nontransferable and nonassignable license to install and use as provided herein (i) Cox access software, as well as software from our licensors that Cox incorporates into its access software; (ii) all associated user documentation and (iii) any updates thereto (the "Software"). Customer's use of the Software is governed by these terms and conditions. All rights title and interest to the Licensed Software, including associated intellectual property rights, are and will remain with Cox and Cox's licensors. Customer may not decompile, reverse engineer, distribute, translate any part of Software. Customer acknowledges that the Software, and any accompanying documentation and/or technical information, is subject to applicable export control laws and regulations of the USA. Customer agrees not to export or re-export the Software, directly or indirectly, to any countries that are subject to USA export restrictions.

19. **Web Hosting Servers.** Cox reserves the right to select the server for Customer's web site for best performance. The Customer understands that the Services provided by Cox may be provided on a shared server. This means that one web site cannot be permitted to overwhelm the server with heavy CPU usage, for example from the use of highly active CGI scripts or chat scripts. If the Customer's web site overwhelms the server and causes complaints from other users, the Customer has outgrown the realm of shared services and will be required by Cox to relocate its web site. If the Customer refuses to comply with this Section, then Cox has the right to terminate the Services. Cox will use reasonable efforts to maintain a full time Internet presence for the Customer. The Customer hereby acknowledges that the network may, at various time intervals, be down due, but not restricted to, utility interruption, maintenance equipment failure, natural disaster, acts of God, or human error and Cox shall not be liable to customer for such outages or server downtime.

20. **Digital Millennium Copyright Act.** Cox is registered under the Digital Millennium Copyright Act of 1998. Pursuant to 17 U.S.C. Section 512(c)(3), if you believe that a Web page hosted by Cox is violating your rights under U.S. copyright law, you may file a complaint with Cox's designated agent. Please contact DMCA@Cox.com for information necessary to file your complaint with Cox.

21. **E-Rate Customers.** This paragraph applies only to educational institutions or libraries seeking reimbursement under the Federal Universal Service Fund. If Customer seeks reimbursement from the Federal Universal Service Fund, then Customer shall annually apply to the Schools and Libraries Division, "SLD" and designate the proper Cox service provider affiliate as its provider of services ordered and/or purchased herein. The parties acknowledge and agree that the SLD may, at its sole discretion, grant different amounts of annual funding to Customer, and, as such, Customer may terminate the purchase of certain Service elements purchased herein if USF funding is no longer available for such Service. Notwithstanding the foregoing, if USF funding is decreased by the SLD, then the Customer shall agree to purchase additional Services from Cox or extend the term of the Agreement by one year. If Customer fails to pursue either option then Cox may terminate the Agreement at the end of the calendar current school year, without penalty.