

CABLE TELEVISION RENEWAL FRANCHISE

GRANTED TO

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

THE CITY OF PORTSMOUTH, NEW HAMPSHIRE

AUGUST 1, 2024

City of Portsmouth Cable Television Renewal Franchise Agreement  
August 1, 2024 – July 31, 2034  
**DRAFT 06-17-2024**

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**AGREEMENT**

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2024, between the City of Portsmouth, as statutory Franchising Authority pursuant to RSA: 53-C, and Comcast of Maine/New Hampshire, Inc. ("Comcast").

**WITNESSETH**

WHEREAS, the City of Portsmouth, New Hampshire, as Franchising Authority pursuant to RSA Chapter 53-C, is authorized to grant one or more nonexclusive, revocable cable television renewal franchises to construct, upgrade, operate and maintain a cable television system within the City of Portsmouth; and

WHEREAS, the Portsmouth City Council has duly appointed members to its Cable and Broadband Internet Commission, a commission established by Portsmouth Ordinance to assist with cable franchise matters;

WHEREAS in accord with its duties the Cable and Broadband Internet has conducted a subscriber survey, reviewed Comcast performance data, met with school and city officials and other stakeholders, explored opportunities for community broadband and took other action to investigate Comcast performance and opportunities;

WHEREAS, the Cable and Broadband Internet Commission conducted a public hearing, pursuant to Section 626(a) of the Cable Act, on January 22, 2024 , to (1) ascertain the future cable-related community needs and interests of Portsmouth, and (2) review the performance of Comcast, during its then current franchise term; and

WHEREAS, the Franchising Authority and Comcast did engage in good faith negotiations and did agree on proposals in connection with the renewal in Portsmouth;

WHEREAS the Portsmouth City Council held a public hearing on \_\_\_\_\_ and voted to approve this Agreement for Franchise Renewal on \_\_\_\_\_.

NOW THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound, the parties agree as follows:

**ARTICLE 1 – DEFINITIONS**

**Section 1.1--Definitions**

For the purpose of this Renewal Franchise, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.

- (1) **Access Channel:** A video channel which the Franchisee shall make available to the Franchising Authority and/or its designees, without charge, for the purpose of transmitting programming by members of the public, City departments and agencies, public schools, educational, institutional and similar organizations (PEG).
- (2) **Access Corporation:** means the entity designated by the Franchising Authority, currently PPMTv, responsible for transmitting programming by members of the public, public schools, education, institutional and similar organizations.
- (3) **Affiliate or Affiliated Person:** When used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- (4) **Basic Service:** Any service tier which includes the retransmission of local television broadcast signals.
- (5) **Cable Act:** Public Law No. 98-549, 98 Stat. 2779 (1984) (the Cable Communications Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992), as further amended by Public Law No. 104- 458, 110 Stat. 110 (1996) (the Telecommunications Act of 1996).
- (6) **Cable Service or Service:** The one-way transmission to Subscribers of Video Programming or other Programming services, together with Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming services, which the Franchisee may make available to Subscribers generally.
- (7) **Cable Television System, Cable System or System:** A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except



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that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (D) an open video system that complies with Section 653 of the Communications Act, or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(8) City: The City of Portsmouth, New Hampshire.

(9) City Attorney: The City Attorney of the City of Portsmouth, New Hampshire.

(10) Commercial Subscriber: A commercial, non-residential Subscriber to Cable Television Service.

(11) Complaint: Any written or verbal contact with the Franchisee in connection with subscription in which a Person expresses dissatisfaction with an act, omission, product or service that is within the Franchisee's control.

(12) Converter: Any device changing the frequency of a Signal. A Subscriber Converter may expand reception capacity and/or unscramble coded Signals distributed over the Cable System.

(13) Digital Terminal Adapter ("DTA"): A set-top box deployed by the Franchisee that converts digital service to analog to support video to analog television sets. The DTA can also deliver digital video distribution to digital television sets via the cable input. The DTA does not support Video on Demand services, Digital Video Recorder (DVR) or Premium Services.

(14) Downstream Channel: A channel over which Signals travel from the Cable System Headend to an authorized recipient of Programming.

(15) Drop: The coaxial cable that connects each home or building to the feeder line of the Cable System.

(16) Educational Access Channel: A specific channel(s) on the Cable System which is made available for use by, among others, educational institutions and/or educators wishing to present non-commercial educational programming and/or information to the public.

(17) Effective Date of Renewal Franchise (the "Effective Date"): August 1, 2024.

(18) FCC: The Federal Communications Commission, or any successor agency.

(19) Franchise Fee: The payments to be made by the Franchisee to the City, which shall have the meaning as set forth in Section 622(g) of the Cable Act.

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- (20) Franchisee: Comcast of Maine/New Hampshire, Inc., or any successor or transferee in accordance with the terms and conditions in this Renewal Franchise
- (21) Franchising Authority: City of Portsmouth, New Hampshire acting through its City Council and Cable Television and Communications Commission.
- (22) Government Access Channel: A specific channel(s) on the Cable System which is made available for use by the Franchising Authority and/or its designee(s) wishing to present non-commercial government Programming and/or information to the public.
- (23) Gross Annual Revenues: All revenues derived by the Franchisee and/or its Affiliates, calculated in accordance with Generally Accepted Accounting Principles ("GAAP"), from the operation of the Cable Television System for the provision of Cable Service(s) over the Cable Television System including, without limitation: the distribution of any Service over the Cable System; Basic Service monthly fees and all other Service fees; any and all Cable Service fees and/or charges received from Subscribers; installation, reconnection, downgrade, upgrade and any similar fees; all digital Cable Service revenues; interest collected on Subscriber fees and/or charges; fees paid on all Subscriber fees ("Fee-on-Fee"); all Commercial Subscriber revenues; all Pay Cable, Pay-Per-View revenues; any other services now or in the future deemed to be lawful for purposes of computing Gross Annual Revenues by a court or forum of appropriate jurisdiction; video-on-demand Cable Services; fees paid for channels designated for commercial use; home-shopping revenues; Converter, remote control and other cable-related equipment rentals and/or leases and/or sales; and advertising revenues. In the event that an Affiliate and/or any other Person is responsible for advertising, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues, paid to the Cable System by an Affiliate or such other Person for the Affiliate's or other Person's use of the Cable System for the carriage of advertising. Gross Annual Revenues shall also include the gross revenue of any other Person which is received directly or indirectly from or in connection with the operation of the Cable System to the extent that such revenue is received, through a means which has the effect of avoiding payment of Franchise Fees to the City that would otherwise be paid herein. It is the intention of the parties hereto that Gross Annual Revenues shall only include such revenue of such Affiliates and/or Persons relating to Signal carriage over the Cable System and not the gross revenues of any such Affiliate(s) and/or Person(s) itself, where unrelated to such Signal carriage. Gross Annual Revenues shall not include actual bad debt that is written off, consistent with GAAP; provided, however, that all or any part of any such actual bad debt that is written off, but subsequently collected, shall be included in Gross Annual Revenues in the period so collected.
- (24) Headend: The electronic center of the Cable System containing equipment that receives, amplifies, filters and converts incoming Signals for distribution over the Cable System.
- (25) Hub or Hub Site: A sub-Headend, generally located within a cable television community, used for the purpose of either (i) Signal processing or switching, or (ii) placement of a fiber node, microwave link or transportation super trunk.

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- (26) **Leased Channel or Leased Access:** A video channel which the Franchisee shall make available pursuant to Section 612 of the Cable Act.
- (27) **Normal Business Hours:** Those hours during which most similar businesses in the City are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week and some weekend hours.
- (28) **Origination Capability:** An activated cable and connection to an Upstream Channel, which allows User(s) to transmit a Signal(s) upstream to a designated location.
- (29) **Outlet:** An interior receptacle, generally mounted in a wall that connects a Subscriber's or User's equipment to the Cable System.
- (30) **Pay Cable or Pay Service(s):** Programming delivered for a fee or charge to Subscribers on a per-channel or group-of-channels basis.
- (31) **Pay-Per-View:** Programming delivered for a fee or charge to Subscribers on a per-program or per-event basis.
- (32) **PEG:** The acronym for "public, educational and governmental," used in conjunction with Access Channels, support and facilities.
- (33) **Pedestal:** An environmental protection unit used in housing Cable Television System equipment and/or amplifiers.
- (34) **Person:** An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- (35) **Prime Rate:** The prime rate of interest at Bank of America, or its successor.
- (36) **Programming or Video Programming:** Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
- (37) **Public Access Channel:** A specific channel(s) on the Cable System which is made available for use by, among others, Portsmouth individuals and/or organizations wishing to present non-commercial programming and/or information to the public.
- (38) **Public Way or Street:** The surface of, as well as the spaces above and below, any and all public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, bulkheads, piers, dedicated public utility easements, and public grounds or waters and all other publicly owned real property within or belonging to the City, now or hereafter existing. Reference herein to "Public Way" or "Street" shall not be construed to be a

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representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

(39) **Renewal Franchise:** The non-exclusive Cable Television Franchise granted to the Franchisee by this instrument.

(40) **Scrambling/encoding:** The electronic distortion of a Signal(s) in order to render it unintelligible or unreceivable without the use of a Converter or other decoding device.

(41) **Service:** Any Basic Service, any Pay Service, or any other Cable Service offered over the Cable Television System, which is offered to any Subscriber in conjunction with, or which is distributed over, the Cable Television System.

(42) **Signal:** Any transmission of electromagnetic or optical energy which carries information from one location to another.

(43) **State:** The State of New Hampshire.

(44) **Subscriber:** Any Person, firm, corporation or other entity in the City who or which elects to subscribe to, for any purpose, a Service provided by the Franchisee by means of, or in connection with, the Cable Television System.

(45) **Subscriber Network:** The Cable System that is owned and operated and maintained by the Franchisee, over which Signals can be transmitted to Subscribers.

(46) **Transfer:** The disposal by the Franchisee, directly or indirectly, by gift, assignment, sale, merger, consolidation or otherwise, of ownership resulting in a change of control of the Cable System or of this Renewal Franchise, to a Person or a group of Persons.

(47) **Trunk and Distribution System:** That portion of the Cable System for the delivery of Signals, but not including Drops to Subscriber's residences.

(48) **Upstream Channel:** A channel over which Signals travel from an authorized location to the System Headend.

(49) **User:** A Person utilizing the Cable Television System, including all related facilities for purposes of production and/or transmission of electronic or other Signals as opposed to utilization solely as a Subscriber.

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**ARTICLE 2 – GRANT OF RENEWAL FRANCHISE**

**Section 2.1 Grant of Renewal Franchise**

Pursuant to the authority of RSA Chapter 53-C of the laws of the State of New Hampshire, and subject to the terms and conditions set forth herein, the City Council of the City of Portsmouth, New Hampshire, as the Franchising Authority of the City, hereby grants a non-exclusive Cable Television Renewal Franchise to the Franchisee, authorizing and permitting the Franchisee to upgrade, install, operate and maintain a Cable Television System within the corporate limits of the City of Portsmouth.

This Renewal Franchise is subject to the terms and conditions contained in Chapter 53-C of the Laws of New Hampshire; the Cable Act; the regulations of the FCC; and all City, State and federal statutes and ordinances of general application, all as may be amended during the term of this Renewal Franchise.

Subject to the terms and conditions herein, the Franchising Authority hereby grants to the Franchisee, the right to construct, upgrade, install, operate and maintain a Cable Television System in, under, over, along, across or upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the City of Portsmouth within the municipal boundaries and subsequent additions thereto, including property over which the City has an easement or right-of-way, for the purpose of reception, transmission, collection, amplification, origination, distribution, and/or redistribution of Signals in accordance with the laws of the United States of America, the State of New Hampshire and the City of Portsmouth. In exercising rights pursuant to this Renewal Franchise, the Franchisee shall not endanger or interfere with the lives of Persons, interfere with any installations of the City, any public utility serving the City or any other Persons permitted to use Public Ways and places.

Grant of this Renewal Franchise does not establish priority for use over other present or future permit holders or the City's own use of Public Way and places. Any references herein to "Public Way" or "Street" shall not be construed to be a representation or guarantee by the City that its property rights are sufficient to permit its use for any purpose, or that the Franchisee shall gain or be permitted to exercise any rights to use property in the City greater than those already possessed by the City.

**Section 2.2 Term of Renewal Franchise**

The term of this Renewal Franchise shall be for ten (10) years, commencing on August 1, 2024, and expiring on July 31, 2034, unless sooner terminated as provided herein.

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## **Section 2.3 Non-Exclusivity of the Renewal Franchise**

(a) This Renewal Franchise shall not affect the right of the Franchising Authority to grant to any other Person a franchise or right to occupy or use the Public Ways or streets, or portions thereof, for the construction, installation, operation or maintenance of a Cable Television System within the City of Portsmouth; or the right of the Franchising Authority to permit the use of the Public Ways and places of the City for any lawful purpose whatsoever. The Franchisee hereby acknowledges the Franchising Authority's right to make such grants and permit such uses.

(b) Pursuant to RSA Chapter 53-C: 3-b(I), the grant of any additional Cable Television franchise(s) shall not be on terms more favorable or less burdensome than those contained in this Renewal Franchise.

## **Section 2.4 Police and Regulatory Powers**

By executing this Renewal Franchise, the Franchisee acknowledges that its rights are subject to the powers of the City to adopt and enforce general by-laws necessary to the safety and welfare of the public. The Franchisee shall comply with all generally applicable Department of Public Works policies and practices and any ordinances enacted by the City. Any conflict between the terms of this Renewal Franchise and any present or future lawful exercise of the City's police and generally applicable regulatory powers shall be resolved in a court of appropriate jurisdiction.

## **Section 2.5 Removal or Abandonment**

Subject to applicable law, upon termination of this Renewal Franchise by passage of time or otherwise, and unless (1) the Franchisee renews or is in the process of renewing its franchise for another term or (2) the Franchisee Transfers the Cable Television System to a transferee approved by the Franchising Authority, the Franchisee shall remove all of its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the Public Ways and places and shall restore the areas, as close as possible, to their original condition. If such removal is not complete within six (6) months after such termination, the Franchising Authority may deem any property not removed as having been abandoned and may dispose of any such property in any way or manner it deems appropriate.

## **Section 2.6 Amendment by Mutual Agreement**

This Renewal Franchise may only be amended by the mutual agreement of the Franchising Authority and the Franchisee, in writing, duly executed and signed by both parties, and attached hereto and made a part of this Renewal Franchise.

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**ARTICLE 3 – TRANSFER AND ASSIGNMENT OF RENEWAL FRANCHISE**

**Section 3.1     Transfer of the Renewal Franchise**

(a)     Subject to applicable law and compliance with the provisions in this Section 3.1, neither this Renewal Franchise, nor control thereof, nor any right thereto, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any Person, company and/or other entity holding such Renewal Franchise to any other Person, company and/or other entity, without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. Such consent shall be given upon a written application therefore on forms prescribed by the FCC.

(b)     The application for consent to a Transfer or assignment shall be signed by the Franchisee and by the proposed transferee or assignee or by their representatives, evidence of whose authority shall be submitted with the application.

(c)     The Franchisee shall submit to the Franchising Authority an original and five (5) copies, unless otherwise directed, of its FCC Form 394 (or such other or successor form used to request consent to any such Transfer or assignment). The request for approval of Transfer or assignment shall also contain all reasonably appropriate documentation and such additional information as the Franchising Authority may reasonably require.

(d)     The Franchising Authority shall complete review of the request for Transfer and make a decision no later than one hundred twenty (120) days after receipt of the request for Transfer. If the Franchising Authority fails to render a final decision on such request within 120 days, such request shall be deemed granted unless both parties hereto agree to an extension of time.

(e)     For purposes of determining whether it shall consent to any such change of control and ownership, the Franchising Authority shall consider the legal, financial and technical qualifications of the prospective controlling or owning Person, and any other criteria allowable under State and/or federal law(s).

(f)     Any proposed controlling or owning Person or transferee approved by the Franchising Authority shall be subject to all of the terms and conditions contained in this Renewal Franchise.

**Section 3.2     Effect of Unauthorized Action**

(a)     The taking of any action in violation of Section 3.1 shall be null and void, and shall be deemed a material breach of this Renewal Franchise.

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(b) If the Franchising Authority denies its consent to any such action and a Transfer has nevertheless occurred, the Franchising Authority may revoke and terminate this Renewal Franchise.

(c) The grant or waiver of any one or more of such consents shall not render unnecessary any subsequent consent or consents, nor shall the grant of any such consent constitute a waiver of any other rights of the City.

**Section 3.3 No Waiver of Rights**

The consent or approval of the Franchising Authority to any assignment, lease, Transfer or sublease of the Renewal Franchise granted to the Franchisee shall not constitute a waiver or release of the rights of the City in and to the streets and Public Ways or any other rights of the City under this Renewal Franchise, and any such Transfer shall, by its terms, be expressly subordinate to the terms and conditions of the Renewal Franchise.



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**ARTICLE 4 – SYSTEM DESIGN**

**Section 4.1 Subscriber Network**

- (a) The Franchisee shall continue to operate, maintain and make available to all residents of the City a Subscriber Network of at least 750 MHz, fed by means of a hybrid fiber-optic/coaxial cable network.
- (b) The Franchisee shall transmit all of its Signals to Subscribers in stereo, provided that such Signals are delivered to the Franchisee in stereo.
- (c) The system design of the Cable Television System shall conform to all applicable FCC technical specifications.

**Section 4.2 Emergency Alert System**

The Subscriber Network shall be in compliance with the FCC's Emergency Alert System ("EAS") regulations and in accordance with applicable New Hampshire laws and/or regulations.

**Section 4.3 Emergency Power**

The Cable System shall incorporate equipment capable of providing standby powering of the headend for a minimum of four (4) hours upon failure of the power furnished by the electric utility company, unless for reasons of Force Majeure.

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**ARTICLE 5 – CONSTRUCTION, INSTALLATION AND MAINTENANCE STANDARDS**

**Section 5.1 Service Availability**

(a) Standard Installation. The Franchisee shall make available Cable Service within seven (7) days of a resident’s request provided that the residence is located not more than two hundred (200) feet from the Trunk and Distribution System and the requirements of subsection (c). Franchisee may charge a standard installation rate in accord with applicable federal and state laws.

(b) Non-Standard Installation. Non-Standard Installations are those in excess of 200 feet from the Trunk and Distribution System or installations that are underground.

For underground installation of less than 200 feet from the Trunk and Distribution System, the Franchisee shall have thirty (30) days to survey, design and provide a cost estimate. Franchisee shall have sixty (60) days after receipt of any required deposit or payment to complete the work.

For installations of between 200 feet and 1,000 feet (whether aerial or underground) from the Trunk and Distribution System, the Franchisee shall have thirty (45) days to survey, design and provide a cost estimate. Franchisee shall have sixty (60) days after receipt of any required deposit or payment to complete the work.

For all other installations, Franchisee shall have up to 180 days to complete all survey, design, cost- estimating and installation work provided that any deposit or payment required is received within thirty days of the request.

Non-standard installation charges shall be fair and reasonable and in accord with applicable law.

(c) All installations are conditioned upon the Franchisee obtaining any easements, agreements and permits necessary to complete the installation. The Franchisee shall make every reasonable effort to obtain such easements, permits, agreements and permits in order to make Cable Service available. All installations are subject to weather conditions and force majeure.

**Section 5.2 Location of Cable Television System**

The Franchisee shall operate and maintain the Cable Television System within the City of Portsmouth. Poles, towers and other obstructions shall be erected so as not to interfere with vehicular (bicycle included) or pedestrian traffic over Public Ways and places. The erection and

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location of all poles, towers and any other obstructions shall be in accordance with applicable City ordinances, regulations and State laws.

### **Section 5.3     Underground Facilities**

(a)     In the areas of the City having telephone lines and electric utility lines underground, whether required by law or not, all of the Franchisee's lines, cables and wires shall be underground. At such time as these facilities are placed underground by the telephone and electric utility companies or are required to be placed underground by the City, the Franchisee shall likewise place its facilities underground. Franchisee shall be responsible for the cost and expense of such placement underground in the same manner as the electric and telephone utility companies. In the event that public or private funds are made available to pay for such underground projects, Franchisee shall be like other similarly situated utilities and included by the City for such funds. In the event that Franchisee is required to place existing aerial plant underground in circumstances not required by law (typically for aesthetic reasons), Franchisee reserves its right to pass any costs in excess of any available public or private funds through to Subscribers.

(b)     Underground cable lines shall be placed beneath the pavement subgrade in compliance with applicable City ordinances, rules, regulations and/or standards. It is the policy of the City that existing poles for electric and communication purposes shall be utilized wherever possible and that underground installation is preferable to the placement of additional poles.

### **Section 5.4     Tree Trimming**

In the installation of amplifiers, poles, other appliances or equipment and in stringing of cables and/or wires as authorized herein, the Franchisee shall avoid all unnecessary damage and/or injury to any and all shade trees in and along the streets, alleys, Public Ways and places, and private property in the City. The Franchisee shall comply with all generally applicable rules and/or regulations established by the Franchising Authority or its designee during the term of this Renewal Franchise regarding tree and/or root trimming and/or pruning.

### **Section 5.5     Restoration to Prior Condition**

Whenever the Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any Public Way or place, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable. If the Franchisee fails to make such restoration within a reasonable time, the Franchising Authority may fix a reasonable time for such restoration and repairs and shall notify the Franchisee in writing of the restoration and repairs required and the time fixed for performance thereof. Upon failure of the Franchisee to

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comply within the specified time period, the Franchising Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Franchisee upon demand by the Franchising Authority.

#### **Section 5.6 Temporary Relocation**

The Franchisee shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person holding a building moving permit issued by the City. The expense of such raising or lowering shall be paid by the party requesting such move. The Franchisee shall be given reasonable notice necessary to maintain continuity of service.

#### **Section 5.7 Disconnection and Relocation**

The Franchisee shall, without charge to the Franchising Authority and/or the City, protect, support, temporarily disconnect, relocate in the same street, or other Public Way and place, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any City department acting in a governmental capacity. In the event that public or private funds are made available to pay for such projects, Franchisee shall be like other similarly situated utilities and included by the City for such funds.

#### **Section 5.8 Safety Standards**

The Franchisee shall construct, upgrade, install, operate, maintain and remove the Cable Television System in conformance with Occupational Safety and Health Administration regulations, the National Electric Code, the National Electrical Safety Code, the rules and regulations of the Commission and the FCC, all applicable building codes and land use restrictions as the same exist or may be amended hereafter.

#### **Section 5.9 Pedestals**

In any cases in which Pedestals housing passive devices are to be utilized, in City Public Ways or within the City public lay-out, such equipment must be installed in accordance with applicable regulations of the City; provided, however, that the Franchisee may place active devices (amplifiers, line extenders, power supplies, etc.) in a low-profile electronic control box at City approved locations to be determined when the Franchisee applies for a permit. All such equipment shall be shown on the Cable System maps submitted to the City. In the event that the

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Franchisee is no longer using any such Pedestals for the provision of Cable Service(s) or other services, the Franchisee shall expeditiously remove any such Pedestals and accompanying Cable Service infrastructure from the Public Way(s) expeditiously.

#### **Section 5.10 Private Property**

The Franchisee shall be subject to all generally applicable Laws, and regulations regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable Television System in the City. The Franchisee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable Television System without charge to the Franchising Authority or the affected Subscriber(s).

#### **Section 5.11 Right to Inspection of Construction**

(a) The Franchising Authority and/or its designee(s) shall have the right to inspect all construction and installation work performed subject to the provisions of this Renewal Franchise in order to ensure compliance with the terms and conditions of this Renewal Franchise and all other applicable law. Any such inspection shall not interfere with the Franchisee's operations, except in emergency situations.

(b) Any inspections conducted by the Franchising Authority and/or its designee(s) shall be at the sole cost and expense of the City and shall have the prior written approval of the Franchisee, which approval shall be given in a timely manner and which approval shall not be unreasonably denied or withheld. Unless otherwise mutually agreed upon, the City shall give at least fourteen (14) days prior notification to the Franchisee of its intention to conduct any inspection. The Franchisee shall be afforded the opportunity to be present during all such inspections.

#### **Section 5.12 Cable System Maps**

(a) Upon written request, the Franchisee shall provide the Franchising Authority strand maps of the Cable System plant. Strand maps shall include the routing of the Cable System, including all underground and aerial plant.

(b) Upon written request, the Franchisee shall make available to the Franchising Authority for inspection "as-built" maps of all Cable System plant at a mutually-agreeable location in Portsmouth.

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**Section 5.13 Commercial Establishments**

The Franchisee shall make Cable Service(s) available to any commercial establishments in the City provided that the establishment(s) agrees to pay for installation and monthly subscription costs as lawfully established by the Franchisee, in accordance with applicable law(s) and/or regulation(s).

**Section 5.14 Local permitting**

The Franchisee shall comply with all local flagging, encumbrance, excavation and like permitting.

**Section 5.15 Residential Exterior Wiring**

The Franchisee shall adhere to Subscribers' reasonable requests for location of entry and shall in other respects observe standard specifications for Drop connections into the residence. Each Drop shall be grounded at each Subscriber's residence at the time of initial installation of Cable Service or during the next scheduled in-house servicing that is performed.

**Section 5.16 Make Ready and Pole Transfers**

If requested by the Franchising Authority, and in coordination with any pole owner, Franchisee shall move its lines and equipment within forty-five (45) days of written notice from the Franchising Authority for nonemergency, standard transfers of lines and equipment on poles for making the pole ready for new attachers. Nothing herein shall alleviate Franchisee from making any transfers of lines and equipment in a shorter period of time if required by other contractual commitments or licensing obligations.

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**ARTICLE 6 – SERVICES AND PROGRAMMING**

**Section 6.1 Basic Service**

The Franchisee shall provide a Basic Service which shall include all Signals which are required to be carried by a Cable System serving the City pursuant to applicable statute or regulation.

**Section 6.2 Programming**

(a) Pursuant to Section 624 of the Cable Act, the Franchisee shall maintain the mix, quality and broad categories of Programming set forth in Exhibit 1 attached hereto and made a part hereof.

(b) Subject to applicable law, the Franchisee shall provide the Franchising Authority and all Subscribers with thirty (30) days advance notice of any significant change in its Portsmouth Programming line-up, if the change is within the control of the Franchisee. Advance notice is not required for the launch of new channels when offered on a subscription basis or added to an existing service tier at no additional cost to the customer. The written notices required by this section may be provided electronically as permitted by 47 C.F.R. § 76.1600.

**Section 6.3 Leased Channels for Commercial Use**

Pursuant to Section 612 (b)(1)(B) of the Cable Act, the Franchisee shall make available channel capacity for commercial use by Persons unaffiliated with the Franchisee.

**Section 6.4 Cable Compatibility**

The Franchisee shall continue to maintain equipment compatibility in accordance with applicable law and regulation.

**Section 6.5 Continuity of Service**

It shall be the right of all Subscribers to receive Service insofar as their financial and other obligations to the Franchisee are honored. The Franchisee shall ensure that all Subscribers receive continuous, uninterrupted Service, except for necessary Service interruptions. When

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necessary Service interruptions can be anticipated, the Franchisee shall notify Subscribers in advance.

**Section 6.6 Service Interruption**

Except where there exists an emergency situation necessitating a more expeditious procedure, the Franchisee may interrupt service for the purpose of repairing or testing the Cable Television System, only during periods of minimal use and, if practical, only after a minimum of twenty-four (24) hours' notice to all affected Subscribers.

**Section 6.7 Parental Control Capacity**

The Franchisee shall provide, upon request, Subscribers with the capability to control the reception of any channels being received on their television sets, at a cost, if any, pursuant to applicable law(s).

**Section 6.8 Connections and Monthly Service to Public Buildings and Schools**

(a) The Franchisee shall provide, install and maintain Subscriber Cable Drops and Outlets and monthly Basic Service to all police and fire stations, public schools, public libraries and other public buildings along the Cable System Trunk and Distribution System included in Exhibit 2, attached and made a part hereof, and any other public buildings and schools along the Cable System Trunk and Distribution System as designated by the Franchising Authority. The Franchisee shall coordinate the location of each Drop and Outlet with the Franchising Authority. There shall be no cost to the City for the standard installation and provision of monthly Basic Service and related maintenance.

(b) The Franchisee shall supply one (1) digital Converter for each Outlet, if necessary, without charge to the City, for the reception of monthly Basic Service. The Franchisee shall maintain such Outlets and Converters for normal wear and tear, at its sole cost and expense; provided, however, that the City shall be responsible for repairs and/or replacement necessitated by any acts of vandalism or theft.

(c) The Franchisee shall provide standard installation of such Drops and/or Outlets within sixty (60) days of any such requests from the Franchising Authority, subject to Force Majeure. The requirements in this section shall be subject as applicable to the FCC's 2019 Third Report and Order in the Matter of Implementation of Section 621 of the Cable Act (the "621 Order"), as such 621 Order may be in effect and/or amended during the term of this Renewal Franchise.



**ARTICLE 7 – PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNELS**

**Section 7.1 PEG Access Programming**

The Franchising Authority and/or its designee(s) shall be responsible for the provision of PEG Access Programming to Subscribers in the City.

**Section 7.2 Peg Access Channels**

(a) The Franchisee shall continue to make available at no cost to the Franchising Authority or Access Corporation one (1) downstream Access Channel for Governmental Access programming, to be programmed by the City and/or the Access Corporation.

(b) The Franchisee shall continue to make available at no cost to the Franchising Authority or Access Corporation one (1) additional downstream Access Channel to be programmed by the Franchising Authority, its School Department and/or the Access Corporation.

(c) The Franchisee shall, upon written request from the Franchising Authority, make available one (1) additional downstream Access Channel to be programmed by the Franchising Authority, its School Department and/or Access Corporation conditioned upon the following:

The second channel, pursuant to paragraph (b) above, is being substantially programmed. Substantially programmed shall mean that the second channel is carrying locally-produced, non-character generated programming between the hours of 5:00 p.m. and 10:00 p.m., Monday through Friday, at least seventy percent (70%) of the time for the twelve (12) week period immediately preceding or the twelve week period preceding the Franchising Authority's written request for a third channel under paragraph (h) below, as may be applicable. Of the 70% described above, at least thirty percent (30%) of the programming shall be new, non-duplicative programming during that six week period.

The Franchisee shall have six (6) months from the receipt of such written notification to activate the Access Channel requested.

(d) The first two Access Channels shall be included as part of the Basic Service available to all Subscribers. The third channel may, at the option of the Franchisee, be made available in the digital tiers only.

(e) The Franchisee shall not move or otherwise relocate the channel location(s) of the Access Channel(s), once established, without the advance, written notice to the Franchising Authority and the Access Corporation; such notice shall be at least ninety (90) days. The Franchisee shall use its best efforts, in good faith, to minimize any Access Channel(s) relocations. The Franchisee shall provide at least thirty (30) days to Subscribers of the relocation. Access Channels shall be located together whenever reasonably possible.

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(f) The City and/or the Access Corporation shall be responsible for the picture quality of all Access Programming at the input of the modulators which is the demarcation point between the video origination equipment owned, operated and maintained by the Franchisee and the City's and/or Access Corporation's end-user equipment. The Franchisee may require access to the modulator(s) for the purpose of testing, maintaining, and/or adjusting output levels of the modulator, and the Franchisee shall test and adjust the levels of such output as reasonably needed to ensure good picture quality. The Franchisee may require the City or the Access Corporation to first test and determine if end-user equipment is the source of any apparent signal problems.

(g) Modulators or equivalent technology at origination locations shall be owned and maintained by the Franchising Authority.

(h) The Franchising Authority agrees that neither the second nor the third Access Channel shall be utilized solely to carry character-generated messages; provided, however, that the Franchising Authority and/or Access Corporation may use character-generated messages along with new programming. The Franchising Authority and/or its designee(s) shall be responsible for providing the Access Channel signal(s) in a standard definition format to the demarcation point at the designated point of origination for the PEG Access Channel(s). The Franchisee shall distribute the Access Channels Signal(s) on its Cable System in standard definition format without substantial alteration or deterioration. The Cable System shall be capable of transmitting color video signals received at the Headend in color, stereo audio signals received at the Headend in stereo and properly formatted closed captioned signals received at the Headend.

(i) Franchisee shall distribute the Government Access Channel programming in high definition. Comcast may implement HD carriage of PEG Channels in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, useable and of a quality equivalent from the perspective of the viewer to other HD channels of the same resolution carried on the cable system. All PEG programming containing properly formatted closed captions, SAP or stereo audio shall be delivered to Subscribers in such formats.

**Section 7.3 Access Channel Maintenance**

The Franchisee shall monitor the Access Channels for technical quality and shall ensure that they are maintained at standards commensurate with those which apply to the Cable System's commercial channels; provided, however, that the Franchisee is not responsible for the technical quality of PEG Access Programming. Upon written request, the Franchisee shall make available a copy of its most recent annual performance tests.

**Section 7.4 PEG Studio Move**

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Should the Access Corporation decide to relocate its studio facilities from its current location, as of the Effective Date of this Renewal Franchise, the Franchisee shall provide origination Capability to the new studio as follows:

- (a) The Franchisee shall provide a written estimate of the cost of providing such video origination Capability within forty-five (45) days of receipt of a request from the Franchising Authority;
- (b) The Franchisee shall be responsible for the first Forty Thousand Dollars (\$40,000.00) of such new Drop and origination Capability relocation costs; any relocation costs in excess of \$40,000.00 shall be paid by the Franchising Authority and/or the Access Corporation;
- (c) Within forty-five (45) days of the Franchising Authority's receipt of the written estimate from the Franchisee, the Franchising Authority and/or the Access Corporation shall issue a payment, if such estimate exceeds \$ 40,000.00;
- (d) Upon receipt of the payment from the Franchising Authority, no later than forty- five (45) days of the Franchising Authority's receipt of the written estimate from the Franchisee (if such costs are \$40,000.00 or less), the Franchisee shall order equipment and begin the construction process; and
- (e) No later than thirty (30) days of the timelines established in Section 7.4(d) above for an aerial Drop and within ninety (90) days for an underground Drop, the Franchisee shall construct, install and provide such origination Capability Drop to the new PEG Access Studio, subject to Force Majeure.

**Section 7.5 Censorship**

The Franchisee shall not engage in any program censorship or any other control of the content of Access Channel programming on the Cable System, except as otherwise required or permitted by applicable law.

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**ARTICLE 8 – FRANCHISE FEES**

**Section 8.1 Franchise Fee Payments**

(a) The Franchisee shall pay to the Franchising Authority, throughout the term of this Renewal Franchise, a Franchise Fee equal to five percent (5%) of the Franchisee's Gross Annual Revenues, as defined in Section 1.1(23) supra, derived during each year of this Renewal Franchise. The Franchisee shall not be liable for Franchise Fees in excess of five percent (5%) of its Gross Annual Revenues; provided, however, the five percent (5%) cap shall not include:

(i) any interest due herein to the Franchising Authority and/or its designee(s) because of late payments; and/or any damages.

(b) Payments shall be made on a quarterly basis throughout the term of this Renewal Franchise not later than forty-five (45) days after the end of each 3 month period (by Feb 15<sup>th</sup>, May 15, August 15<sup>th</sup> and November 15<sup>th</sup>). Payments shall be made payable to the City of Portsmouth.

(c) The Franchisee shall file with each such payment a statement, prepared by a financial representative of the Franchisee, documenting, in detail, the total of all Gross Annual Revenues of the Franchisee during the preceding year. The Franchisee shall also complete and submit to the Franchising Authority, on a quarterly basis, a Gross Annual Revenues Reporting Form substantially and materially consistent with that which is attached hereto as Exhibit 3.

(d) Nothing in the Cable Act or this Renewal shall be construed to limit any authority of the Franchising Authority to impose a tax, fee or other assessment of any kind otherwise permitted by law with respect to Cable Service.

**Section 8.2 Other Payment Obligations and Exclusions**

The Franchise Fee payments shall be in addition to and shall not constitute an offset or credit against any and all taxes or other fees or charges which the Franchisee or any Affiliated Person shall be required to pay to the City, or to any State or federal agency or authority, as required herein or by law; the payment of taxes, fees or charges shall not constitute a credit or offset against the Franchise Fee payments all of which shall be separate and distinct obligations of the Franchisee and each Affiliated Person.

**Section 8.3 Late Payment**

In the event that the fees herein required are not tendered on or before the dates fixed in Section 8.1 above, interest due on such fee shall accrue from the date due at the rate of two percent (2%) above the Prime Rate. Any payments to the City pursuant to this Section 8.3 shall

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not be deemed to be part of the Franchise Fees to be paid to the City pursuant to Section 8.I hereof and shall be within the exclusion to the term "franchise fee" for requirements incidental to enforcing the franchise pursuant to Section 622(g)(2)(D) of the Cable Act.

**Section 8.4    Re-computation**

(a)    Tender or acceptance of any payment required shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the City may have for additional sums including interest payable under this Section 8.3. All amounts paid shall be subject to audit and re-computation by the Franchising Authority and shall occur in no event later than two (2) years after each quarterly Franchise Fee is tendered with respect to such fiscal year.

(b)    If the Franchising Authority has reason to believe that any such payment(s) are incorrect, the Franchising Authority shall notify the Franchisee of such belief in writing and the Franchisee shall have thirty (30) days from receipt of such written notification to provide the Franchising Authority with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Franchising Authority does not believe that such documentation supports the accuracy of such payment(s), the Franchising Authority may conduct an audit of such payment(s). If, after such audit and re-computation, an additional fee is owed to the Franchising Authority, such fee shall be paid within thirty (30) days after such audit and re-computation and the Franchisee shall contribute to the costs of such audit in an amount not to exceed Three Thousand Dollars. The interest on such additional fee shall be charged from the due date at the rate of two percent (2%) above the Prime Rate during the period that such additional amount is owed.

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**ARTICLE 9 – RATES AND CHARGES**

**Section 9.1 Rate Regulation**

The Franchising Authority reserves the right to regulate the Franchisee's rates and charges to the extent allowable under applicable federal law.

**Section 9.2 Notification of Rates and Charges**

(a) The Franchisee shall make all rates and charges of any kind and all terms or conditions related to Subscriber Services: (1) available in writing at the Franchisee's business office; (2) accessible electronically through publication on Franchisee's website; and as required in writing under Section 13.5.

(b) The Franchisee shall provide annually to both the Franchising Authority and to all Subscribers written schedules which shall describe all Services offered by the Franchisee, all rates and charges of any kind, and all terms or conditions relating thereto. If the Subscriber has opted for electronic communications schedules may be distributed by electronic mail.

(c) The Franchisee shall notify all Subscribers and the Franchising Authority in writing of any impending rate increases no later than thirty (30) days prior to such increase(s) and provide each Subscriber with a schedule describing existing and proposed rates for each service offered; provided, however, that this Section 9.2 shall not prohibit the Franchisee from offering or discontinuing promotional discounts upon less than thirty (30) days' notice. No rates or charges shall be effective except as they appear on a schedule timely provided to the Franchising Authority and Subscribers.

(d)

At the time of initial solicitation of Service, the Franchisee shall also provide each Subscriber with a detailed explanation of downgrade and upgrade policies and the manner in which Subscribers may terminate Cable Service.

(e) During the term of this Renewal Franchise, whenever a Subscriber contacts the Franchisee to inquire about Basic Service rates, the Franchisee shall clearly inform all Subscribers and potential Subscribers about the availability and price of the lowest cost of Cable Service.

(f) (c) Under the 1992 Cable Television Consumer Protection and Competition Act, certain costs of Public, Educational and Governmental ("PEG") Access and other Franchise requirements, may be passed through to Subscribers in accordance with federal law.

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**Section 9.3 Credit for Service Interruption**

In the event that the Franchisee's Service to any Subscriber is interrupted for twenty-four (24) or more consecutive hours, provided that the interruption is not caused by the Subscriber, the Franchisee shall grant such Subscriber upon request a pro rata credit or rebate in compliance with applicable law.

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**ARTICLE 10 – INSURANCE AND BONDS**

**Section 10.1 Insurance**

From the Effective Date and at all other times during the term of the Renewal Franchise, including the time for removal of facilities, the Franchisee shall obtain, pay all premiums for, and file with the Franchising Authority, on an annual basis, copies of the certificates of insurance for the following policies:

(1) A commercial general liability policy naming the Franchising Authority, the City, its officers, boards, committees, commissions, and employees as additional insured on a primary and noncontributory basis for all claims on account of injury to or death of a Person or Persons occasioned by the construction, installation, maintenance or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of One Million Dollars (\$1,000,000.00) for injury or death or property damage in any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000.00) in umbrella form. Overall limits of liability may be met through any combination of primary and excess liability insurance policies.

(2) Automobile liability insurance for owned automobiles, non-owned automobiles and/or rented automobiles in the amount of:

(a) One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, consequent death and property damage per occurrence;

(3) Worker's Compensation and Employer's Liability in the minimum amount of:

(a) Statutory limit for Worker's Compensation; and

(4) The following conditions shall apply to the insurance policies required herein:

(a) Such insurance shall commence no later than the Effective Date of this Renewal Franchise.

(b) Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.

(c) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in New Hampshire.



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- (d) The Franchisee's failure to obtain to procure or maintain the required insurance shall constitute a material breach of this Renewal Franchise under which the City may immediately suspend operations under this Renewal Franchise, subject to the provisions of Section 12.1 herein.

**Section 10.2 Performance Bond**

(a) The Franchisee shall obtain and maintain at its sole cost and expense throughout the entire term of the Renewal Franchise a faithful performance bond running to the City, with good and sufficient surety Franchised to do business in the State of New Hampshire in the sum of Twenty Five Thousand Dollars (\$25,000.00). The bond shall be conditioned upon the faithful performance and discharge of all of the obligations imposed by the Renewal Franchise.

(b) The performance bond shall be effective throughout the term of the Renewal Franchise, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that the Franchisee shall fail to comply with any one or more provisions of the Renewal Franchise, or to comply with any order, permit or direction of any department, agency, commission, board, division or office of the City having jurisdiction over its acts, or to pay any claims, liens or taxes due the City which arise by reason of the construction, maintenance, operation or removal of the Cable Television System, the City shall recover from the surety of such bond all damages suffered by the City.

(c) The performance bond shall be a continuing obligation of this Renewal Franchise. In the event that the City recovers from the surety, the Franchisee shall take immediate steps to reinstate the performance bond to the \$25,000.00 required coverage herein. Neither this section, any bond accepted pursuant thereto, nor any damages recovered thereunder shall limit the liability of the Franchisee under the Renewal Franchise.

**Section 10.3 Reporting**

The Franchisee shall submit to the Franchising Authority, upon request, copies of all current certificates regarding (i) all insurance policies, and (ii) the performance bond.

**Section 10.4 Indemnification**

The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the Franchising Authority, the City, its officials, boards, commissions, committees, agents and/or employees against all claims for damage due to the actions of the Franchisee, its employees,

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officers or agents arising out of the construction, installation, maintenance, operation and/or removal of the Cable Television System under the Renewal Franchise, including without limitation, damage to Persons or property, both real and personal, caused by the construction, installation, operation, maintenance and/or removal of any structure, equipment, wire or cable installed. Indemnified expenses shall include all reasonable attorneys' fees and costs incurred up to such time that the Franchisee assumes defense of any action hereunder. The Franchising Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchising Authority. Any settlement requiring City remuneration must be with the advance, written consent of the Franchising Authority, which shall not be unreasonably denied. If the Franchising Authority does not consent to the terms of any such settlement or compromise, the Franchisee shall not settle the claim or action, but its obligation to indemnify the Franchising Authority shall not exceed the amount of such settlement.

## **Section 10.5 Notice of Cancellation or Reduction of Coverage**

The insurance policy (or performance bond) shall not be cancelled, materially changed or the amount of coverage thereof reduced until thirty (30) days after receipt by the Franchising Authority by certified mail of one (1) copy of a written notice from the Franchisee of such intent to cancel, materially change or reduce the coverage required herein.

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**ARTICLE 11 – ADMINISTRATION AND REGULATION**

**Section 11.1 Regulatory Authority**

The Franchising Authority and/or its designee(s) shall be responsible for the monitoring and oversight of the Cable Television System including enforcement and compliance.

**Section 11.2 Performance Evaluation Hearings**

(a) The Franchising Authority may hold a performance evaluation hearing during each year of this Renewal Franchise. The Franchisee shall be provided timely notice of any such hearing. All such evaluation hearings shall be open to the public. The purpose of such evaluation hearing shall be to, among other things, (i) review the Franchisee's compliance with the terms and conditions of this Renewal Franchise, customer service and Complaint response, and Access Channels, facilities and support; and (ii) hear comments, suggestions and/or Complaints from the public. The Franchising Authority shall provide the Franchisee with reasonable, advance notice regarding the hearing date and compliance matters.

(b) The Franchising Authority shall have the right to question the Franchisee on any aspect of this Renewal Franchise including, but not limited to, the operation, maintenance and/or removal of the Cable Television System. During review and evaluation by the Franchising Authority, the Franchisee shall cooperate fully with the Franchising Authority and/or its designee(s), and produce such documents or other materials as are reasonably requested from the City. Any Subscriber or other Person may submit comments during such review hearing, either orally or in writing, and such comments shall be duly considered by the Franchising Authority.

(c) Within sixty (60) days after the conclusion of such review hearing(s), the Franchising Authority shall issue a written report with respect to the adequacy of Cable System performance and quality of Service. If inadequacies are found which result in a violation of any of the provisions of this Renewal Franchise, the Franchising Authority shall notify the Franchisee in writing of any instance of non-compliance. The Franchisee shall subsequently respond and propose a plan for implementing any changes or improvements necessary.

**Section 11.3 Emergency Removal of Plant**

If, in case of fire or disaster in the City at any time, it shall become necessary in the reasonable judgment of the Franchising Authority or any designee, to cut or move any of the wires, cables, amplifiers, appliances or appurtenances of the Cable Television System, the City shall have the right to do so at the sole cost and expense of the Franchisee.

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**Section 11.4 Removal and Relocation**

The Franchising Authority shall have the authority at any time to order and require the Franchisee to remove or relocate any pole, wire, cable or other structure owned by the Franchisee that is dangerous to life or property. In the event that the Franchisee, after notice, fails or refuses to act within a reasonable time, the Franchising Authority shall have the authority to remove or relocate the same, which cost the Franchisee shall reimburse to the City.

## **ARTICLE 12 – BREACH, LIQUIDATED DAMAGES, FRANCHISE REVOCATION**

### **Section 12.1 Determination of Breach**

(a) In the event that the Franchising Authority has reason to believe that the Franchisee has defaulted in the performance of any or several provisions of this Renewal Franchise, except as excused by Force Majeure, the Franchising Authority shall notify the Franchisee in writing, by certified mail, of the provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. The Franchisee shall have thirty (30) days from the receipt of such notice to:

(b) Respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support the Franchisee's position; or

(c) Cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure the default and diligently continue such efforts until the default is cured. The Franchisee shall report to the Franchising Authority, in writing, by certified mail, at twenty-one (21) day intervals as to the Franchisee's efforts, indicating the steps taken by the Franchisee to cure any such default and reporting the Franchisee's progress until any such default is cured.

(d) In the event that (i) the Franchisee fails to respond to such notice of default; (ii) the Franchisee fails to cure the default or to take reasonable steps to cure the default within the required thirty (30) day period; and/or (iii) the Franchising Authority is not satisfied with the Franchisee's response(s) or the Franchisee's efforts to cure, the Franchising Authority shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to the Franchisee. The Franchisee shall be provided reasonable opportunity to offer evidence and be heard at such public hearing. Within thirty (30) days after the public hearing, the Franchising Authority shall determine whether or not the Franchisee is in default of any provision of this Renewal Franchise.

(e) In the event that the Franchising Authority, after such hearing, determines that the Franchisee is in default, the Franchising Authority may determine to pursue any of the following remedies, by written notice to the Franchisee:

- (i) assess liquidated damages in accordance with the schedule set forth in Section 12.2 below;
- (ii) seek specific performance of any provision of the Renewal Franchise which reasonably lends itself to such remedy as an alternative to damages;
- (iii) commence an action at law for monetary damages;

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- (iv) foreclose on all or any appropriate part of the security provided pursuant to Article 10;
- (v) declare the Renewal Franchise to be revoked subject to Section 12.3 below and applicable law;
- (vi) invoke any other remedy available to the City.

**Section 12.2 Liquidated Damages**

(a) For the violation of any of the following provisions of this Renewal Franchise, liquidated damages shall be paid by the Franchisee to the Franchising Authority, subject to Section 12.1 above. Any such liquidated damages shall be assessed as of the date that the Franchisee receives written notice, by certified mail, of the provision or provision(s) which the Franchising Authority believes are in default, provided the Franchising Authority made a determination of default pursuant to Section 12.1 (d) above.

- (i) For failure to fully activate, operate, maintain the Subscriber Network, in accordance with Article 4, Five Hundred Dollars (\$500.00) per day, for each day that such non-compliance continues.
- (ii) For failure to obtain the advance, written approval of the Franchising Authority for any transfer of this Renewal Franchise in accordance with Article 3, Two Hundred Fifty Dollars (\$250.00) per day, for each day that such non-compliance continues.
- (iii) For failure to comply with the PEG requirements of Article 7 including maintenance of origination locations, Five Hundred Fifty Dollars (\$500.00) for each day that any such non-compliance continues.
- (iv) For failure to comply with the Subscriber and consumer protections in accordance with Article 13, One Hundred Fifty Dollars (\$150.00) for each day that any such non-compliance continues.
- (v) For failure to provide, install and/or fully activate the Subscriber Network and/or Outlets in accordance with Section 6.6 herein and/or Exhibit 2, Fifty Dollars (\$50.00) per day that any such non-compliance continues.
- (vi) For failure to timely submit any requested reports pursuant to Article 14, Fifty Dollars (\$50.00) per day that reports are not submitted as required.

Such liquidated damages shall be in addition to, and not a limitation upon, any other provisions of this Renewal Franchise and applicable law, including penalties or revocation, or any other statutorily or judicially imposed penalties or remedies; provided, however, that in the event that the Franchising Authority collects liquidated damages for a specific breach for a specific period of time, pursuant to Section 12.2 above, the collection of such liquidated damages shall be deemed to be the exclusive remedy for the specific breach for such specific period of time only. With respect to liquidated damages assessed, all similar violations or

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failures resulting from the same factual events affecting multiple Subscribers shall be assessed as a single violation.

(b) Each of the above-mentioned cases of non-compliance shall result in damage to the City, its residents, businesses and institutions, compensation for which will be difficult to ascertain. The Franchisee agrees that the liquidated damages in the amounts set forth above are fair and reasonable compensation for such damage. The Franchisee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture, and are within one or more exclusions to the term "franchise fee" provided by Section 622(g)(2)(A)-(D) of the Cable Act.

## **Section 12.3 Revocation of the Renewal Franchise**

In the event that the Franchisee fails to comply with any material provision of this Renewal Franchise, the Franchising Authority may revoke the Renewal Franchise granted herein, subject to the procedures of Section 12.1 above and applicable law.

## **Section 12.4 Termination**

The termination of this Renewal Franchise and the Franchisee's rights shall become effective upon the earliest to occur of: (i) the revocation of the Renewal Franchise by action of the Franchising Authority, pursuant to Section 12.1 and 12.3 above; (ii) the abandonment of the Cable System, in whole or material part, by the Franchisee without the express, prior approval of the Franchising Authority; or (iii) the expiration of the term of this Renewal Franchise, unless the Franchisee is otherwise permitted to continue operating the Cable System pursuant to applicable law(s).

## **Section 12.5 Notice To Other Party of Legal Action**

In the event that either party intends to take legal action against the other party for any reason, such moving party shall first, except where injunctive relief is sought, (i) give the other party at least forty-five (45) days' notice that an action will be filed, (ii) meet with the other party before it files any such action, and (iii) negotiate the issue, which is the subject of any proposed legal action, in good faith with the other party.

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**Section 12.6 Non-Exclusivity of Remedy**

No decision by the Franchising Authority or the City to invoke any remedy under the Renewal Franchise or under any statute, law or ordinance shall preclude the availability of any other such remedy.

**Section 12.7 No Waiver-Cumulative Remedies**

- (a) The rights and remedies provided are cumulative and not exclusive of any remedies provided by 626(d) of the Cable Act.
- (b) A waiver of any right or remedy by the Franchising Authority at any one time shall not affect the exercise of such right or remedy or any other right or remedy by the Franchising Authority at any other time. In order for any waiver of the Franchising Authority to be effective, it shall be in writing. The failure of the Franchising Authority to take any action in the event of any breach by the Franchisee shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Franchising Authority to take any action permitted by this Renewal Franchise at any other time in the event that such breach has not been cured, or with respect to any other breach by the Franchisee.
- (c) Acceptance of the terms and conditions of this Renewal Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or implied, by the Franchisee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions.



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**ARTICLE 13 –SUBSCRIBER RIGHTS AND CONSUMER PROTECTION**

**Section 13.1 Customer Service Office**

(a) For the term of this Renewal Franchise, the Franchisee shall continue to maintain, operate and staff a conveniently located customer service office in Portsmouth or adjacent community.

The customer service office shall be open for walk-in business during Normal Business Hours for the purpose of, among other things, exchanging/replacing customer equipment; receiving customer payments, inquiries and Complaints, made in person, including without limitation, those regarding billing, Service, installation, equipment malfunctions and answering general inquiries.

(b) The Franchisee shall periodically notify its Subscribers of the location.

**Section 13.2 Customer Service Call Center**

(a) The Franchisee shall maintain and operate its customer service call center twenty-four (24) hours a day, seven (7) days a week, including holidays. The Franchisee reserves the right to modify its business operations with regard to such customer service call center. The Franchisee shall comply with all State and federal requirements pertaining to the hours of operation of such customer service call center.

(b) In the event that the Franchisee does not maintain and operate its customer service call center twenty-four (24) hours a day, seven (7) days a week, the Franchisee shall maintain a telephone answering service to handle Subscriber inquiries, Complaints and emergencies, and provide proper referral regarding billing and other Subscriber information. The Franchisee shall log all such after-hours calls. Any answering service shall (i) forward all inquiries and/or Complaints to the Franchisee the morning of the next business day and (ii) inform each Subscriber calling that his or her Complaint will be referred to the Franchisee's Customer Service Department for response. If requested, or reasonably warranted by the reported nature of the Subscriber's problem or inquiry, the Franchisee shall promptly contact each individual Subscriber to follow-up on their individual problem and/or inquiry.

**Section 13.3 Installation Visits-Service Calls-Response Time**

(a) The Franchisee shall provide Cable Service for new installations as set forth in Section 5.1 of this Renewal Franchise.

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- (b) When arranging appointments with Subscribers, the Franchisee shall specify in advance whether such will occur in the morning or afternoon, or a narrower interval, if possible, and the Franchisee shall make reasonable efforts to install at times convenient to Subscribers (including times other than 9:00 a.m. to 5:00 p.m. weekdays).
- (c) A Subscriber Complaint or request for Service received after Normal Business Hours shall be responded to the next business day.
- (d) The Franchisee shall ensure that there are stand-by technician(s) on-call at all times after Normal Business Hours. The answering service shall be required to notify the stand-by technician(s) of (i) any emergency situations, (ii) an unusual number of calls and/or (iii) a number of similar Complaint calls or a number of calls coming from the same area.
- (e) System outages shall be responded to within 24 hours by technical personnel. For purposes of the section, an outage shall be considered to occur when three (3) or more calls are received from an area sharing the same node, or when the Franchisee has reason to know of such an outage.
- (f) The Franchisee shall remove all Subscriber Drop Cables, within seven (7) days of receiving a request from a Subscriber to do so.

**Section 13.4 FCC Customer Service Obligations**

The Franchisee shall comply with the FCC's Customer Service Obligations, codified at 47 U.S.C. Section 76.309.

**Section 13.5 Notices to Subscribers**

The Franchisee shall provide annually to all Subscribers the following:

- (a) Schedule of all rates and charges;
- (b) Description of all tiers and programming packages with a listing of channels or Services;
- (c) Summary of all billing policies, procedures and dispute mechanisms;
- (d) Notice of the availability of detailed information on parental controls;
- (e) Franchisee's privacy policies;
- (f) Consumer Protection Notices as set forth in 13.6 of this Agreement; and
- (g) All other notices required by State and Federal law.

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The Franchisee shall make the above-listed information available at all times 1) in writing at the Franchisee's business office and (2) accessible electronically through publication on Franchisee's website.

Prospective Subscribers shall be provided the above-listed information in hard copy form upon request and new Subscribers shall be provided the above-listed information by mail within thirty (30) days of the start of service.

### **Section 13.6 Notice to Subscribers Regarding Quality of Service**

As set forth in R.S.A. 53-C:3-d, annually, the Franchisee shall provide to each of its Subscribers a notice which:

- (a) Informs Subscribers how to communicate their views to the Franchisee and to the Office of the Solicitor General, Consumer Protection and Antitrust Bureau; and
- (b) States the responsibility of the Office of the Solicitor General, Consumer Protection and Antitrust Bureau to receive and act on consumer complaints.

Such notice shall be in non-technical language, understandable by the general public, and in a convenient format. On or before January 30 of each year, the Franchisee shall certify to the Franchising Authority and to the Office of the Solicitor General, Consumer Protection and Antitrust Bureau that it has distributed the notice as provided in this section during the previous calendar year as required by this section.

### **Section 13.7 Complaint Resolution Procedures**

- (a) The Franchisee shall establish a procedure for resolution of Complaints by Subscribers.
- (b) Upon reasonable notice, the Franchisee shall expeditiously investigate and resolve all Complaints regarding the quality of Service, equipment malfunctions and similar matters. In the event that a Subscriber is aggrieved, the Franchising Authority or its designee(s) shall be responsible for receiving and acting upon such Subscriber Complaints/inquiries, as follows:
  - (i) Upon the written request of the Franchising Authority or its designee(s), the Franchisee shall, within ten (10) business days after receiving such request, send a written report to the Franchising Authority with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps taken by the Franchisee.
  - (ii) Should a Subscriber have an unresolved Complaint regarding cable television operations, the Subscriber shall be entitled to file his or her Complaint with the Franchising Authority or its designee(s), who shall have primary responsibility for the continuing

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administration of the Renewal Franchise and the implementation of Complaint procedures. Thereafter, if the Subscriber wishes to participate in further processing of the Complaint, the Subscriber shall meet jointly with the Franchising Authority or its designee(s) and a representative of the Franchisee, within thirty (30) days of the Subscriber's filing of his or her Complaint, in order to fully discuss and attempt to resolve such matter. The Franchisee shall notify each new Subscriber, at the time of initial installation of Cable Service, of the procedures for reporting and resolving all of such Complaints, and annually to all Subscribers.

(c) Notwithstanding the foregoing, if the Franchising Authority or its designee(s) determines it to be in the public interest, the Franchising Authority or its designee(s) may investigate any Complaints or disputes brought by Subscribers arising from the operations of the Franchisee.

(d) In the event that the Franchising Authority or its designee(s) finds a pattern of multiple unresolved Subscriber Complaints, the Franchising Authority or its designee(s) and the Franchisee shall discuss, in good faith, possible amendments to the Franchisee's procedures for the resolution of Complaints.

#### **Section 13.9 Billing Practices Information and Procedures**

Billing procedures shall be as follows:

(a) The Franchisee shall bill all Subscribers to its Cable Television System in a uniform, non-discriminatory manner, regardless of a Subscriber's level of Service(s). The bill shall have an explicit due date.

(b) The Franchisee shall provide all Subscribers with itemized bills that contain the information required by federal law and/or regulation.

(c) Late charges, if applied, shall in no case be imposed earlier than thirty (30) days after the bill date, unless otherwise required by applicable law(s).

(d) Subscribers shall have at least thirty (30) days from the due date of a bill in which to register a complaint or dispute concerning their bill.

(e) In the event that a bona fide billing dispute arises, the Franchisee shall respond to each Complaint within fifteen (15) days of receiving a written notification of the dispute from the Subscriber and shall make its best efforts to resolve each dispute within forty-five (45) days of receiving Subscriber's written notification of the dispute. If the dispute cannot be settled within the forty-five (45) day period and/or the results of the Franchisee's investigation into the dispute are unacceptable to the Subscriber, the Franchisee shall notify, and deliver to, the affected Subscriber its proposed resolution of the dispute within one day of expiration of the forty-five (45) day period.

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(f) The affected Subscriber shall be responsible for paying only that portion of the bill that is not in dispute. In no event shall the Franchisee, prior to the resolution of a billing dispute, disconnect, assess a late payment charge or require payment of a late payment charge from the Subscriber for failure to pay bona fide disputed bills, or portions thereof, provided the Subscriber notifies the Franchisee of the dispute within thirty (30) days following the beginning of the billing period for which service was rendered under the disputed bill.

**Section 13.10 Disconnection and Termination of Cable Services**

The Franchisee shall not disconnect a Subscriber's Cable Service for nonpayment unless (1) the Subscriber is delinquent, (2) the Franchisee has given Subscriber written notice of such past due amount in a clear and conspicuous manner; and (3) Subscriber has been given a second notice of delinquency, which may be as part of a monthly bill. Disconnection and/or termination of Cable Services shall be subject to applicable federal and/or State law(s) and regulation(s).

**Section 13.11 Change of Service**

Upon Subscriber's notification to disconnect or downgrade Service, the Franchisee shall cease and/or adjust Subscriber's monthly Service charges immediately or as of the Subscriber's specified disconnect or downgrade date. In no case shall Subscriber be charged for Service(s) requested to be changed after the Franchisee is notified of the change(s). Franchisee's charges, if any, shall comply with applicable federal law and regulation.

**Section 13.12 Subscriber Equipment/Wiring**

The Franchisee shall not cut, modify, or otherwise interfere with any coaxial, telephony, data, or electrical wiring in any Subscriber's residence or place of business without the express permission of the Subscriber or his agent, unless it presents an immediate danger to life or safety. Any such modification must be disclosed to the subscriber immediately.

**Section 13.13 Employee and Agent Identification Cards**

All of the Franchisee's employees and agents entering upon private property, in connection with the construction, installation, maintenance and operation of the Cable System, including repair and sales personnel, shall be required to carry an employee picture identification card issued by the Franchisee.

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**Section 13.14 Protection of Subscriber Privacy**

- (a) The Franchisee shall respect the rights of privacy of every Subscriber of the Cable Television System and, pursuant to applicable federal law, shall not violate such rights through the use of any device or Signal associated with the Cable Television System, and as hereafter provided.
- (b) The Franchisee shall comply with all privacy provisions contained in this Article 13 and all other applicable federal and State laws including, but not limited to, the provisions of Section 631 of the Cable Act.
- (c) The Franchisee shall be responsible for carrying out and enforcing the Cable System's privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy.
- (d) Subject to Section 631 of the Cable Act, the Franchisee shall notify all third parties who offer Cable Services in conjunction with the Franchisee, or independently over the Cable Television System, of the subscriber privacy requirements contained in this Renewal Franchise.

**Section 13.15 Remote Control Devices**

The Franchisee shall allow its Subscribers to purchase, from legal and authorized parties other than the Franchisee, own, utilize and program remote control devices. The Franchisee takes no responsibility for changes in its equipment which might make inoperable the remote control devices acquired by Subscriber.

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**ARTICLE 14 – REPORTS, AUDITS AND PERFORMANCE TESTS**

**Section 14.1 General**

(a) Upon the written request of the Franchising Authority, the Franchisee shall promptly submit to the City any information regarding the Franchisee, its business and operations, or any Affiliated Person, with respect to the Cable System, any Service, in such form and containing such detail as may be specified by the City pertaining to the subject matter of this Renewal Franchise which may be reasonably required to establish the Franchisee's compliance with its obligations pursuant to this Renewal Franchise.

(b) If the Franchisee believes that the documentation requested by the Franchising Authority involves proprietary information, then the Franchisee shall submit the information to its counsel, who shall confer with the City Attorney for a determination of the validity of the Franchisee's claim of a proprietary interest. If the City Attorney agrees that the material is of a proprietary nature, the information furnished shall not be a public record, but the Franchisee shall make it available, on its premises, to the Franchising Authority, at times convenient for both parties. The Franchisee may require the Franchising Authority and/or its representatives to execute a confidentiality agreement before making any such information available. In the event of a disagreement, the parties may submit the matter to the appropriate appellate entity.

**Section 14.2 Financial Reports**

Upon written request, the Franchisee shall furnish the Franchising Authority and/or its designee(s), no later than one hundred and twenty (120) days after the end of the Franchisee's Fiscal Year, a Statement of Income upon which the annual Franchise Fee is based, including: all Subscriber Revenues, including but not limited to, regular Basic Service charges, Pay Cable charges, Pay-Per-View revenues, installation revenues (including reconnection, second set, etc.), Leased Access revenues.

**Section 14.3 Cable System Information**

Upon written request but not more than once per year, the Franchisee shall file with the Franchising Authority a statistical summary of the operations of the Cable System. The report shall include, but not be limited to, (i) the number of Basic Service Subscribers, (ii) the number of dwelling units passed, and (iii) the number of plant miles in construction/upgrade or completed.

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### **Section 14.4 Reports of Subscriber Contact**

To establish the Franchisee's compliance with the requirements set forth in Article 13, the Franchisee shall provide to the Franchising Authority, upon written request of the Franchising Authority, such reports from existing tracked data of Subscriber contact with the Franchisee as may be reasonably requested.

### **Section 14.5 Subscriber Complaint Log**

(a) In accordance with RSA 53-C:3-e as it may be amended, the Franchisee shall keep a record or log of all Complaints received regarding quality of Service, equipment malfunctions, billing procedures, employee relations with Subscribers and similar matters. Such records shall be maintained by the Franchisee for a period of two (2) years and shall be available to the Franchising Authority upon request.

(b) The Franchisee shall, within ten (10) business days after receiving a written request from the Franchising Authority, send a written report to the Franchising Authority with respect to any Complaint. Such report shall provide a full explanation of the investigation, finding(s) and corrective steps taken, as allowed by applicable law.

### **Section 14.6 Annual Performance Tests**

Upon request of the Franchising Authority, the Franchisee shall provide copies of its applicable Cable System performance tests for the Portsmouth area including, as may be applicable to Cable System, and including applicable performance tests arising from the Franchisee's obligations under 47 C.F.R. Section 76.640, Support for Unidirectional Cable Products Digital Systems.

### **Section 14.7 Quality of Service**

Where there exists evidence which, in the reasonable judgment of the Franchising Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Franchising Authority shall cite specific facts which casts such doubt(s), in a notice to the Franchisee. The Franchisee shall submit a written report to the Franchising Authority, within thirty (30) days of receipt of any such notice from the Franchising Authority, setting forth in detail its explanation of the problem(s).



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**Section 14.8 Dual Filings**

- (a) Upon written request, the Franchisee shall make available to the Franchising Authority, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Portsmouth Cable System operation hereunder.
- (b) In the event that either the Franchising Authority or the Franchisee requests from any State or federal agency or commission a waiver or advisory opinion pertaining to any material aspect of the Portsmouth Cable System operation hereunder, it shall immediately notify the other party in writing of the request, petition or waiver.

**Section 14.9 Additional Information**

At any time during the term of this Renewal Franchise, upon the reasonable written request of the Franchising Authority, the Franchisee shall not unreasonably deny any requests for further information which may be required to establish the Franchisee's compliance with its obligations pursuant to the Renewal Franchise.

**Section 14.10 Investigation**

The Franchisee and any Affiliated Person(s) shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Franchising Authority or City for the purpose of verifying compliance with this agreement and applicable law.

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**ARTICLE 15 – MISCELLANEOUS PROVISIONS**

**Section 15.1 Entire Agreement**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

**Section 15.2 Captions**

The captions to sections throughout this Renewal Franchise are intended solely to facilitate reading and reference to the sections and provisions of the Renewal Franchise. Such captions shall not affect the meaning or interpretation of the Renewal Franchise.

**Section 15.3 Separability**

If any section, sentence, paragraph, term or provision of this Renewal Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Renewal Franchise.

**Section 15.4 Acts or Omissions of Affiliates**

During the term of this Renewal Franchise, the Franchisee shall be liable for the acts or omission of its Affiliates while such Affiliates are involved directly in the construction, upgrade, maintenance or operation of the Cable System for the provision of Service as if the acts or omissions of such Affiliates were the acts or omissions of the Franchisee.

**Section 15.5 Renewal Franchise Exhibits**

The Exhibits to this Renewal Franchise, attached hereto, and all portions thereof, are incorporated herein by this reference and expressly made a part of this Renewal Franchise.

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### **Section 15.6 Warranties**

The Franchisee warrants, represents and acknowledges, that, as of the Effective Date of this Renewal Franchise:

- (a) The Franchisee is duly organized, validly existing and in good standing under the laws of the State of New Hampshire;
- (b) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Renewal Franchise, to enter into and legally bind the Franchisee to this Renewal Franchise and to take all actions necessary to perform all of its obligations pursuant to this Renewal Franchise; and
- (c) To the best of the Franchisee's knowledge, there is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Renewal Franchise.

### **Section 15.7 Force Majeure**

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, that party shall not be in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State of New Hampshire or any of their departments, agencies, political subdivision, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; hazardous safety conditions; and unavailability of essential equipment and/or materials or other event that is reasonably beyond the control of the Franchisee, the Franchising Authority and/or the City.

### **Section 15.8 Nondiscrimination**

The Franchisee shall not discriminate against any Person in its solicitation, Service or access activities, if applicable, on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the City, sex, sexual orientation, disability, age, marital status, or status with regard to public assistance. The Franchisee shall be subject to all other requirements of federal and State laws or regulations relating to nondiscrimination through the term of the Renewal Franchise.

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**Section 15.9 Applicability of Renewal Franchise**

All of the provisions in this Renewal Franchise shall apply to, and are enforceable against, the Franchising Authority, the Franchisee, and their respective successors and assignees.

**Section 15.10 Notices**

(a) Every notice to be served upon the Franchising Authority shall be delivered or sent by first class or certified mail (postage prepaid) to

- (i) Office of the City Manager  
Portsmouth City Hall  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801

With copies to:

- (ii) City Attorney  
Portsmouth City Hall  
1 Junkins Avenue  
Portsmouth, New Hampshire 03801

or such other address(es) as the Franchising Authority may specify in writing to the Franchisee. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

(b) Every notice served upon the Franchisee shall be delivered or sent by certified mail (postage prepaid) to:

- (i) Comcast Cable Communications, Inc.  
Attn: Government Relations  
5 Omni Way  
Chelmsford, MA 01887

With copies to:

- (ii) Comcast Cable Communications, Inc.  
Attn: Vice President, Government Affairs

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676 Island Pond Road  
Manchester, New Hampshire 03109

- (iii) Comcast Cable Communications  
Attn: Government Relations  
1701 JFK Boulevard  
Philadelphia, Pennsylvania 19103

or such other address(es) as the Franchisee may specify in writing to the Franchising Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt of such notice(s).

- (c) All required notices shall be in writing.

**Section 15.11 City's Right of Intervention**

The City hereby reserves to itself, and the Franchisee acknowledges the City's right as authorized by applicable law or regulation to intervene in any suit, action or proceeding involving this Renewal Franchise, or any provision in this Renewal Franchise.

**Section 15.12 No Recourse Against the Franchising Authority**

Pursuant to Section 635A(a) of the Cable Act, in any court proceeding involving any claim against the Franchising Authority or other governmental entity or any official, member, employee, or agent of the Franchising Authority or such governmental entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Renewal Franchise, any relief, to the extent such relief is required by any other provision of federal, State or local law, shall be limited to injunctive relief and declaratory relief

**Section 15.13 Term**

All obligations of the Franchisee and the Franchising Authority set forth in the Renewal Franchise shall commence upon the execution of this Renewal Franchise and shall continue for the term of the Renewal Franchise except as expressly provided for herein.

**Section 15.14 Jurisdiction**

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Jurisdiction and venue over any dispute, action or suit shall be in any court of appropriate venue and subject matter jurisdiction located in the State of New Hampshire and the parties by this instrument subject themselves to the personal jurisdiction of the court for the entry of any such judgment and for the resolution of any dispute, action, or suit.

**Section 15.15 No Third-Party Beneficiaries**

Nothing in this Agreement is or was intended to confer third-party beneficiary status on any person other than the parties to this Agreement to enforce the terms of this Agreement.

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**EXHIBITS**

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**EXHIBIT 1 – PROGRAMMING AND INITIAL SIGNAL CARRIAGE**

The Franchisee shall provide, at a minimum, the following broad categories of Programming:

- News Programming;
- Sports Programming;
- Public Affairs Programming;
- Children's Programming;
- Entertainment Programming;
- Foreign Language Programming; and
- Local Programming.



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**EXHIBIT 2 – FREE CONNECTIONS AND MONTHLY SERVICE TO PUBLIC BUILDINGS  
AND SCHOOLS**

The following schools and public buildings shall, if requested by the Franchising Authority, receive Drops and the monthly Basic Cable Service at no charge \*.

The Franchisee shall, if requested by the Franchising Authority, supply the same number of DTA's listed below and up to three (3) DTA's at each location not showing any DTA's. The buildings listed below shall receive the number of DTA's as listed and highlighted.

1. City Hall/School Department Central Office, 1 Junkins Avenue, Portsmouth
2. Police Dept, 3 Junkins Avenue, Portsmouth
3. Library, 175 Parrott Avenue, Portsmouth
4. Department of Public Works, 680 Peverly Hill Road, Portsmouth
5. Portsmouth Fire Station 1, 170 Court Street, Portsmouth
6. Portsmouth Fire Station 2, 3010 Lafayette Road, Portsmouth
7. Portsmouth High School, 50 Alumni Circle, Portsmouth
8. Portsmouth Middle School, 155 Parrott Avenue, Portsmouth
9. Little Harbour School, 50 Clough Drive, Portsmouth
10. New Franklin School, 1 Frankin Drive, Portsmouth
11. Dondero School, 32 Van Buren Avenue, Portsmouth, NH 03801
12. Portsmouth Alternative Secondary School, 35 Sherburne Road, Portsmouth (until August 30, 2024)
13. Spinnaker Point Recreation Center, 30 Spinnaker Way, Portsmouth
14. Connie Bean Recreation Center, 155 Parrott Avenue, Portsmouth
15. Pierce Island Wastewater Treatment Facility, Peirce Island Road, Portsmouth
16. Senior Activity Center, 125 Cottage Street, Portsmouth
17. Foundry Place Garage Parking Office, Portsmouth
18. Madbury Water Treatment Plant, 60 Freshet Road, Madbury
19. Community Campus, 100 Campus Drive, Portsmouth

In the event that Comcast serves International Drive at Pease, Fire Station 3, at 127 International Drive, Portsmouth NH

\* and, subject to Section 6.8 supra, any and all new municipal and/or Portsmouth Public School buildings that are constructed and/or put into use during the term of this Renewal Franchise.

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**EXHIBIT 3 – GROSS ANNUAL REVENUES QUARTERLY REPORTING FORM**

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**SIGNATURE PAGE**

In Witness Whereof, this Renewal Franchise is hereby issued by the City Council of the City of Portsmouth, New Hampshire, as Franchising Authority, and all terms and conditions are hereby agreed to by Comcast of Maine/New Hampshire, Inc., this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE CITY OF PORTSMOUTH

\_\_\_\_\_  
By: Karen S. Conard  
Title: City Manager

As authorized by the City Council by vote taken: \_\_\_\_\_

COMCAST OF MAINE/NEW HAMPSHIRE, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_