



Wireless Service Agreement – Page 1

As a wireless customer of Cibola Internet Services (CIS) I agree to abide by the following terms and conditions:

- 1) **The Initial Term of this Wireless Service Agreement shall be () months, unless otherwise specified in Schedule A of this Agreement and shall revert to a month to month agreement after the Initial Term.**
- 2) Cibola Internet will provide to Customer the Services, software and/or equipment described in the attached Schedule A. All equipment supplied by CIS to provide the Service shall remain the property of CIS and shall be so identified.
- 3) Customer will pay for those Services, software and/or additional equipment pursuant to the attached Schedule A.
 - a) Invoices for all services rendered will be prepared and provided by Cibola Internet and shall include New Mexico Gross Receipt Tax as applicable. Rates shall be in accordance with the terms of this Agreement. Terms of payment shall be net fifteen (15) days from the date of the invoice.
 - b) Past due invoices in excess of 30 days will be subject to a maximum delinquency charge of 1.5% per month of the amount in arrears, or the legal limit for such charges, whichever is less. Customer agrees to pay all costs of collection of delinquent accounts, including reasonable attorney's fees. Customer further agrees that any equipment supplied by CIS to provide the Service to the Customer will be subject to confiscation by Cibola Internet whenever a past due invoice in excess of 30 days exists. Customer agrees to relinquish all such equipment to Cibola Internet's authorized personnel upon such demand. Cibola Internet retains the right to disconnect Customer's service or terminate this Agreement, at Cibola Internet's option, whenever Customer's account is thirty (30) days or more past due.
- 4) **Service Availability**
 - a) Services normally will be available twenty-four (24) hours per day, seven (7) days a week, excluding scheduled maintenance as designated from time to time by Cibola Internet in its sole discretion. Cibola Internet will use its best efforts to notify Customer in advance of all scheduled maintenance or down time through network messaging, or email.
 - b) To the extent Cibola Internet's suppliers withdraw data or databases without notice to Cibola Internet, Cibola Internet reserves the right to withdraw service for such data and databases without prior notice to the Customer.
 - c) Cibola Internet does not guarantee uninterrupted or error free services or that all services will always be available.
 - d) Cibola Internet will not issue any credit or refund to customer for any scheduled or unscheduled Service outage
 - e) Customer will provide CIS access to CIS owned equipment during normal business hours.
- 5) **In using the services provided pursuant to this Agreement,**
 - a) Customer agrees to abide by Cibola Internet's Acceptable Use Policy ("AUP") and Service Agreement as revised from time to time to meet the changes in the online world and its technology. The latest version of the AUP and Service Agreement can be found on Cibola Internet's Web site or can be obtained by contacting Cibola Internet.
 - b) Customer agrees to comply with all applicable copyright notices and only to upload or download content for which Customer has the legal right to do so. Customer agrees not to violate any copyright, trademark, patent, or other intellectual property rights.

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- c) Customer agrees to comply with all applicable federal, state and local laws and regulations in utilizing the services provided pursuant to this Agreement.
 - d) Customer agrees not to use the trade names and trademarks “Cibola Internet”, “Cibola Internet LLC”, or any of the Cibola Internet’s service identifiers in any fashion unless specifically authorized to do so in writing by Cibola Internet.
 - e) Customer agrees Customer, and not Cibola Internet shall be responsible for all use by any one of Customer’s Cibola Internet accounts or services.
 - f) Customer agrees Customer, and not Cibola Internet shall be responsible for the security of Customer’s usernames and passwords.
 - g) Customer Agrees to not use the Service for commercial purposes such as Web Site Hosting, or Gaming Servers. Customer also agrees that they will not resell or trade this service.
 - h) In the event that service is cancelled or terminated for any reason, customer agrees to return all equipment provided to customer by Cibola Internet Services to provide the Service as detailed in Schedule “A” within 3 days of termination or cancellation of Wireless Service. Failure to return equipment specified in Schedule “A” will result in customer being fully liable for the full retail value of Equipment at the time the Equipment was provided to Customer by Cibola Internet Services.
- 6) Customer hereby acknowledges and gives permission to CIS to service Customers computer to make it ready and compatible, to access the Internet through CIS. Customer also gives permission to CIS to perform some or all of the following services including but not limited to:
- Verify and/or install the latest version of any web browser and/or updates to the existing operating system (Windows Updates) installed on Customer’s computer
 - Verify and or correctly configure any existing configuration of Microsoft Internet Explorer web browser installed on Customer’s computer
 - Correctly configure any web browser that was previously installed on Customer’s computer to connect to CIS
 - Correctly configure any web browser that CIS has installed on Customer’s computer to be compatible with CIS
 - Remove any incompatible or conflicting programs or drivers that may interfere with Customer connecting to the Internet through CIS
 - Update and run an installed virus scan program and/or perform an online virus scan to detect and/or correct any potential or existing computer virus contamination
 - Download, install, configure, update and run any necessary software such as Spybot Search and Destroy and Ad-aware that will detect and remove any spyware and pop up advertising software that may be installed on Customer’s computer
 - Perform a disk scan (Scandisk) to detect and correct any disk errors
 - Perform a disk defragmentation of Customer’s hard drive
 - Install and configure any necessary hardware on Customer’s computer to access the Internet, including but not limited to any appropriate PCI and/or USB network interface card (NIC card)

Customer also acknowledges that Customer has made, and has possession of a back up copy of all critical program, data and configuration files that were installed on Customers computer before being serviced by CIS as outlined above.

Customer will not hold CIS responsible or liable in any way for any damage to any hardware, software, or data loss, accidental or otherwise as a result of any service that CIS may or may not have performed on Customer’s computer.

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Customer also acknowledges that Customer is the rightful owner or an authorized agent of the rightful owner of the computer that Customer is requesting to be serviced by CIS as outlined above.

- 7) Upon request by Cibola Internet, Customer shall indemnify, hold harmless and defend Cibola Internet, its employees, officers, directors, agents and telecommunication providers from all liabilities, claims and expenses, including attorney's fees and costs, that arise from (i) a breach of this Agreement by Customer; (ii) any transmission of text, software, communications, images, sources, data or information in any form by Customer through Cibola Internet's services; (iii) any improper or illegal use by Customer or any third-party of the accounts and Service provided to Customer by Cibola Internet

pursuant to this Agreement and (iv) any claims by third-parties arising out of Customer's use of the services, equipment and software provided pursuant to this Agreement [except claims primarily caused by Cibola Internet's proven gross negligence or intentional misconduct]. Cibola Internet reserves the right to assume the defense of any claims against it which is subject to this right of indemnity. In such event, Customer will reimburse Cibola Internet on a monthly basis for the cost of this defense, within thirty (30) days of each request for reimbursement by Cibola Internet.

8) EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

- f) Customer expressly agrees that any services, equipment and software being provided by Cibola Internet pursuant to this agreement are being provided on an "as is" and "as available" basis, without any warranties of any kind from Cibola Internet either express or implied. Cibola Internet is giving no implied warranty of merchantability and no implied warranty of fitness for a specific purpose.
- g) Cibola Internet's entire liability and Customer's exclusive remedy for any dispute with Cibola Internet as to the Services provided pursuant to this agreement is the cancellation of Customer's account as provided in paragraph 7. Customer's exclusive remedy with respect to any equipment purchased from or provided by Cibola Internet shall solely be pursuant to the Manufacturer's Warranty. Cibola Internet shall have no liability as to any equipment provided by CIS or sold by CIS to Customer pursuant to this agreement except to the extent such liability cannot be limited by applicable law. Cibola Internet's entire liability and Customer's exclusive remedy with respect to the use of any software provided by Cibola Internet shall be the replacement of any Cibola Internet provided software found to be defective.
- h) In no event Shall Cibola Internet be liable for consequential or punitive damages arising from Customer's use of Cibola Internet's services, the Internet, email or any other claim relating to this agreement.
- i) Customer shall secure and present to CIS written permission from the property manager or owner of the Service Location to allow CIS or its designated subcontractor to install the equipment necessary to provide the Service.

- 9) Unless this Agreement is for a fixed term as shown on the attached Schedule A, or paragraph 1 of this Agreement, this Agreement may be terminated without cause by either party upon thirty (30) days advance written notice mailed to the other party at the address on the last page of this Agreement. Cibola Internet may terminate this Agreement immediately and without notice for any material breach of this Agreement. **If this Agreement is terminated by the Customer prior to the end of the Initial Term as specified in paragraph 1 of this Agreement, the Customer shall be liable for an early termination fee of the remainder of the monthly recurring charges of the Initial Term of this Agreement.**

- 10) Unless this Agreement is for a fixed rate as shown on the attached schedules, Cibola Internet reserves the right to change its fees and billing methods at any time, subject to Cibola Internet giving Customer written notice of any such change at least thirty (30) days in advance of such change.

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- 11) Except for claims for nonpayment to Cibola Internet which Cibola Internet shall have the option to pursue in Court, all claims, and disputes in regard to this Agreement and the transaction described in it shall be submitted to mediation in Albuquerque, Bernalillo County, New Mexico with a mediator agreeable to all parties or to a mediator appointed by the Presiding Judge of the Second Judicial District Court for the State of New Mexico if the parties cannot agree on a mediator. Such mediation shall begin within thirty (30) days of written notice being sent by either party to the other party. The cost of such mediation shall be paid equally by all parties to the dispute, unless otherwise agreed by them.
- 12) Failing successful resolution in mediation of any dispute described in Paragraph 9 above, arbitration shall be the sole remedy for resolution of any and all disputes (except claims for nonpayment to Cibola Internet, which Cibola Internet shall have the option to pursue in Court). The arbitration shall be held in Albuquerque, Bernalillo County, New Mexico with a single arbitrator agreeable to all parties, or to an arbitrator appointed by the Presiding Judge of the Second Judicial District Court of New Mexico if the parties cannot agree on a mediator. The laws of the State of New Mexico shall apply. Such arbitration shall begin within sixty (60) days of declaration of failure of the mediation by the mediator, or by any of the parties to the dispute. The cost of such arbitration shall be borne by the non-prevailing party. The arbitration award is binding and conclusive as to the issues of the dispute, including, but not limited to, the issue of paying the fees of the arbitrator. Such award is enforceable in the same manner as any judgement of the Second Judicial District Court of New Mexico and shall not be subject to appeal absent gross negligence on the part of the arbitrator. The arbitration shall be conducted with absolute confidentiality of proceedings. The parties shall sign a pledge to that confidentiality before proceeding.
- 13) Waiver: A waiver, modification or failure to insist by Customer and Cibola Internet on any of these terms or conditions shall not void, waive or modify any of the other terms or conditions and shall not be construed as a waiver or relinquishment of Cibola Internet's or Customer's right to performance of any such term or terms.
- 14) Severability: If any provision or part of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions shall continue in full force and effect.
- 15) Governing Law: This Agreement shall be governed by and construed according to the laws of the State of New Mexico as such laws are applied to contracts made and to be performed entirely in New Mexico. All actions hereunder shall be brought in a federal or state court of competent jurisdiction in New Mexico except as modified by paragraphs 11 and 12.
- 16) Attorney's Fees: In any litigation or arbitration between the parties, the non-prevailing party shall pay the attorney's fees and court cost of the prevailing party.
- 17) Assignment: Customer may not assign this Agreement without Cibola Internet's advance written approval. Upon CIS approval of Customer requested assignment of this Agreement, a one hundred dollar (\$100.00) administration fee will be assessed to the assigned, and a new 12 month Agreement will be required. Cibola Internet may assign this Agreement and its rights under it at anytime without notice to Customer.
- 18) Entire Agreement: By signing below, Customer acknowledges that Customer has read this Agreement including the attached Schedule A and agrees that this Agreement including the attached Schedule A is the complete and exclusive statement of the agreement between the parties, superseding all other communications, oral or written. This Agreement, including the attached Schedule A, constitutes the entire agreement between the parties. This Agreement, including Schedule A may be modified only by written amendment agreed to and signed by both parties. In the event Customer issues a purchase order or other instrument covering the services herein specified, it is understood and agreed that it is for the Customer's internal purposes only and shall in no way modify, add to, or delete any of the terms and conditions in this Agreement