10. **INSURANCE AND INDEMNIFICATION**

10.1. *Insurance*:

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, throughout the entire Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance insuring the County and the Franchisee with respect to the construction, operation and maintenance of the Cable System, and the conduct of the Cable Service business in the County in the minimum amounts of $2,000,000 per occurrence; $2,000,000 aggregate for each occurrence. Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

10.1.1.2. Copyright infringement insurance insuring the County and the Franchisee in the minimum amount of $2,000,000 for copyright infringement occasioned by the operation of the Cable System.

10.1.2. All insurance policies and certificates maintained pursuant to this Agreement shall provide the following unless the County approves other language:

> "It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 30 days after receipt by the Communications Administrator of a written notice of such intention to cancel or not to renew."

10.1.3. Each of the required insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A-*VII* or better rating by Best's Key Rating Guide, Property/Casualty Edition.

10.1.4. The Franchisee shall provide the Communications Administrator with an original certificate of insurance providing evidence of all coverage required of this Agreement upon execution of this Agreement and any time the Franchisee obtains new insurance policies.

10.1.5. The County may review the amounts of any insurance policies under the Agreement and shall have the right to require reasonable adjustments to such insurance policies consistent with the public interest. The County shall provide the Franchisee written notice at least sixty (60) days in advance of any reasonable adjustments.

10.1.6. All Commercial General Liability Insurance policies shall name the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds. Such additional insured requirement shall be noted on the original certificate of insurance provided to the County.

10.2. *Indemnification*:

10.2.1. Subject to the provisions below, the Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments, whether for damages or otherwise arising out of or alleged to arise out of the installation, construction, operation, or maintenance of the Cable System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation.

10.2.2. This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or to operations of the PEG Channels to the extent such operations are carried out by a person other than the Franchisee or its agents. Further, the Franchisee shall not be required to indemnify the County for acts of the County which constitute willful misconduct or negligence, on the part of the County, its officers, employees, agents, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access, or EAS.

10.2.3. In no event shall the Franchisee be responsible for indemnifying the County under Section 10.2 for any act or omission by the Franchisee that has been specifically approved by the County, or for any act or omission by the County or its elected and appointed officers, boards, commissions, commissioners, agents, or employees that results in personal injury or property damage.

10.2.4. The County shall give the Franchisee written notice of its obligation to indemnify the County under Section 10.2 within thirty (30) days of receipt of a claim, suit, cause of action, or proceeding for which the Franchisee is obligated to indemnify the County. The County shall take action necessary to avoid entry of a default judgment if such action is needed before the County provides the Franchisee notice; provided, however, that no such action shall in anyway prejudice or harm the Franchisee.

10.2.5. With respect to Franchisee's indemnity obligations set forth in Section 10.2, Franchisee shall provide the defense of any claims, suits, causes of action, or proceedings brought against the County by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the County, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent the County from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the County, Franchisee shall have the right to defend, settle or compromise any claim, suit, cause of action, or proceeding arising hereunder, so long as the settlement includes a full release of the County, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement. In the event that Franchisee fails, after notice pursuant to

subsection 10.2.4, to undertake the County's defense of any claims encompassed within this Section 10.2, Franchisee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees, including fees for outside counsel hired to defend the County, incurred in defending against any such claim, suit, cause of action, or proceeding, any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement or the Communications Ordinance, the County's out-of-pocket expenses, and the reasonable value of any services rendered by the County Attorney, or the County staff or its employees.

10.2.6. Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of the Franchisee or its subcontractors for damages under the Agreement or the Communications Ordinance or to excuse the faithful performance of obligations required by the Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this section or other provisions of the Agreement or the Communications Ordinance.

10.2.7. The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Franchisee in the construction, maintenance, use, operation or condition of the Cable System. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of the Franchisee for injury to Persons or damage to property; provided, however, that the County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the County for which the County is legally responsible, subject to any and all defenses and limitations of liability provided by law.