

## THE BELLA VISTA MOTEL (the “BVM”) ACCEPTABLE USE POLICY (the “AUP”)

Purpose: To provide those persons, guests, customers or staff of the BVM, as determined in the sole discretion of the BVM, (individually the “User” and collectively the “Users”) internet access free of charge. Please read this policy prior to accessing the BVM Internet Services (the “Internet Services”). By using the Internet Services the User agrees to the terms of this AUP, as it may be amended or revised at any time.

Applicability: Users of the Internet Services at the BVM located in Sierra Vista, Arizona.

Summary: The BVM through the Internet Services provides a password protected wireless network with encrypted data for the purpose of enabling Users to access the Internet. Use of the Internet Services is governed by all applicable local, state, and federal laws, and this AUP, and is subject to the "BVM Disclaimer of Warranties, Limitation of Liability and Indemnification" and “Dispute Resolution; Arbitration; Class Action Waiver,” herein. The BVM offers the Internet Services free of charge and does not provide technical support for Users. For instructions on how to connect to the network, please refer to the document, "Guidelines to Access the Internet Services.”

Contacts: The BVM does not provide technical support. Information regarding network access can be found in the document, "Guidelines to Access the Internet Services.”

Authority: The BVM reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrong in compliance with applicable laws and regulations. Such cooperation may include, but shall not be limited to, providing account or user information or email as well as the monitoring of the Internet Services in compliance with applicable law. The BVM does not guarantee any level of quality of service and may restrict access to the Internet Service, limit the bandwidth available to any User or group of Users and restrict usage time at any time.

User Privileges: The primary purpose of the Internet Services is to provide a convenient wireless means of Internet access for the User. The Users will be granted non-exclusive limited access to this wireless network with encrypted data in the designated areas as technology and network capacities allow and as restricted by this AUP. Users may not resell the Internet Services or provide or redistribute the Internet Services to any third parties by and means.

User Responsibilities: Users will not use Internet Services to violate any applicable federal, state, local or international laws. Some examples include but are not limited to:

Users will not use the Internet Services to harm or attempt to harm a minor, including, but not limited to, hosting, possessing, distributing, or transmitting child pornography or other material that is unlawful.

User will not use the Internet Services to post, transmit or distribute content that is illegal, threatening, abusive, libelous, slanderous, defamatory, promotes violence or destruction of property or is otherwise offensive or objectionable, in BVM's sole discretion.

User will not use the Internet Services to invade another person's privacy, stalk, harass, or otherwise violate the privacy rights of others. User will not collect or store personal data about other users.

User will not use the Internet Services to take part in any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

User will not use the Internet Services to commit any crime, act of terrorism, or fraud, or to plan, encourage or help others to commit any crime or fraud, including, but not limited to, acts of terrorism, conducting, participating in, or otherwise facilitate, pyramid, ponzi, chain letters or other illegal soliciting schemes.

User will not use the Internet Services to post, copy, transmit or disseminate any content that infringes the patents, trademarks, copyrights, trade secrets or proprietary rights of others. User will assume all risk regarding the determination of whether material is in the public domain, or may otherwise be used by the User for such purposes.

User will not use the Internet Services to send pornographic, obscene or profane materials.

User will not disrupt Internet Services, including without limitation, the wireless network. Examples include but are not limited to the following: User will not access the accounts of others or attempt to penetrate the security measures of the Internet Services, including the wireless network or other computer systems ("hacking"). User will not restrict, inhibit, or otherwise interfere with the ability of any other person to use or enjoy their equipment or the Internet Services, including, without limitation, by posting or transmitting any information or software which contains a virus, lock, key, bomb, worm, Trojan botnet, cancelbot, or other harmful feature. User will not use tools designed for compromising network security, such as password-guessing programs, cracking tools, packet sniffers or network probing tools. User will not access or use the Internet Services with an IP address other than the dynamic Internet Protocol ("IP") address assigned to User which adheres to dynamic host configuration protocol ("DHCP"). User will

not configure the Internet Services or any related equipment to access or use a static IP address or use any protocol other than DHCP.

User will not modify any cable modem connected to the provider of the Internet Services, in order to commit theft of the Internet Services, fraudulently use the Internet Services or provide the Internet Services to a third party.

User will not modify the MAC address of any modem connected to the network.

User will not violate any policy or guideline of Cox Communications, Inc. located at <http://ww2.cox.com/> or any subsequent provider of Internet Services.

User will not resell or redistribute the Internet Services to any third party via any means including but not limited to wireless technology.

Users are responsible for ensuring they have the appropriate compliant wireless card (802.11) and are running up-to-date anti-virus software on their wireless device.

Users must respect all copyrights. Commercial software licensed to BVM, Cox Communications, Inc. or any subsequent internet service provider may only be installed on devices expressly covered by the licenses. The downloading or sharing of copyrighted materials in violation of law is strictly prohibited. The running of programs by a single User, or group of Users, that may substantially degrade network performance or accessibility will not be allowed. Electronic chain letters, unsolicited messages or materials, bulk email, or other forms of solicitation ("spamming"), mail bombs, and excessive recreational use of the network are prohibited. Any action which promotes or furthers pornographic or inappropriate usage is prohibited including use to further any illegal purposes. Connecting to "Peer to Peer" file sharing networks or downloading large files, such as CD ISO images, is also not allowed.

Notwithstanding any security measures that may be in place, the Internet Services, including without limitation wireless internet access, may not be inherently not secure, and Users should adopt appropriate security measures when using the Internet Services. Users must be aware that as they connect their devices through the wireless network they expose their devices to: worms, viruses, trojan horses, denial-of-service attacks, intrusions, packet-sniffing and other abuses by third-parties. The BVM highly discourages the conducting of confidential transactions (such as online banking or credit card usage) over any wireless network, including this one. Users are responsible for providing security measures that are suited for the User's intended use of the Internet Services. Users shall take full responsibility for taking adequate measures to safeguard data from loss.

Users are responsible for all devices they connect through the Internet Services.

Users are responsible for securing their own wireless equipped devices prior to making connections to the Internet Services.

Please know that wireless technology is a shared resource, therefore, speeds will be directly affected by the number of simultaneous Users.

Limitations of Access to Internet Services:

The User hereby agrees to be bound by the terms of the "BMV Disclaimer of Warranties, Limitation of Liability and Indemnification."

The BVM is in no way liable for any damage, undesired resource usage or detrimental effects that may occur to the User's device and software while the User has his/her device connected to the Internet Services.

The User is responsible for any actions taken from his/her device, whether intentional or unintentional, that causes damages or otherwise affects other devices or Users of the Internet Services.

The User hereby releases the BVM for, from or against liability for any loss, damage, security infringement or injury which the User may sustain as a result of being allowed access to the Internet Services. The User agrees to be solely responsible for any such loss, infringement, damage, or injury.

Violations and Sanctions:

Reporting Violations: Any knowledge or evidence of violations of this AUP should be reported to BVM at [bellavista@bvm.phxcoxmail.com](mailto:bellavista@bvm.phxcoxmail.com).

Penalties: Users who violate this AUP may be subject to the range of sanctions including, but not limited to, termination of user privileges. The BVM, in its sole discretion, has the authority to revoke access to the Internet Services at any time or for any reason or take other appropriate action in order to maintain network security and reliability relating to the Internet Services.

Revisions/Termination: The BVM, in its sole discretion, reserves the right to revise or terminate the Internet Services or this AUP at any time, for any reason, and without notice, including the right to terminate with or without notice, without liability to any User or any third party. Usage of the Internet Services indicates that User understand and agree to the terms and conditions listed herein and to any revisions.

## BVM DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION

### SECURITY WARNING AND DISCLAIMER

**WARNING:** The Internet Services include a password protected, data encrypted wireless network provided by the BVM for the User's convenience, and User should use it at User's own risk. The Internet Services are available to the Users and notwithstanding its password protection and data encryption may not be inherently secure. The BVM cannot and does not guarantee the privacy of User data and communication or the security of the Internet Services while using the Internet Services.

There are potentially serious security issues with any computer connected to the Internet without the appropriate protection, ranging from viruses, worms and other programs that can damage the User's computer, to attacks on the computer by unauthorized or unwanted third parties. By using the Internet Services, User acknowledges and knowingly accepts the potentially serious risks of accessing the Internet over a wireless network. It is recommended that Users take steps to protect their own computer system, such as installing current anti-virus software and maintaining appropriate firewall protection. For further information on how a User can protect himself or herself on this network, consult a security professional.

By using these Internet Services, User acknowledges and agrees that USER'S USE OF THIS SERVICE IS SOLELY AT USER'S OWN RISK. By using the Internet Services, User also agree to all terms set forth in the following Disclaimer of Warranties, Limitation of Liability and Indemnification and this AUP.

### DISCLAIMER OF WARRANTIES:

The BVM disclaims any and all responsibility or liability for the accuracy, content, completeness, legality, reliability, or operability or availability of information or material displayed in or accessible through the Internet Services. The BVM disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or material. The BVM disclaims any responsibility for any harm resulting from downloading or accessing any information or material on the Internet through the Internet Services.

THE INTERNET SERVICES AND ALL MATERIALS, INFORMATION, PRODUCTS AND SERVICES INCLUDED IN INTERNET SERVICES ARE PROVIDED "AS IS," WITH NO REPRESENTATIONS OR WARRANTIES WHATSOEVER. THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS AND ITS LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE INTERNET SERVICES. THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY REPRESENTATION OR WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH THE INTERNET SERVICES. THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE INTERNET SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED BY THE INTERNET SERVICES, AS WELL AS FOR ANY INFORMATION OR ADVICE RECEIVED THROUGH ANY LINKS PROVIDED IN THE INTERNET SERVICES.

USER UNDERSTANDS AND AGREES THAT (A) THE INTERNET SERVICES WILL NOT BE UNINTERRUPTED OR ERROR-FREE, (B) THERE IS NO WARRANTY OR GUARANTEE THAT THE INTERNET SERVICES WILL OPERATE AT ANY MINIMUM DATA TRANSFER SPEED, (C) THE BVM HAS NO CONTROL OVER THE THIRD PARTY NETWORKS OR SITES USER MAY ACCESS IN THE COURSE OF USER'S USE OF THE INTERNET SERVICES, AND (D) USERS DOWNLOADING OR OTHERWISE OBTAINING MATERIAL OR DATA THROUGH THE USE OF THE INTERNET SERVICES AT USERS OWN DISCRETION AND RISK AND THAT USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO USER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF SUCH MATERIAL OR DATA.

#### LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL THE BVM, ITS OWNERS, ITS EMPLOYEES, ITS AGENTS, ITS AFFILIATES, ITS SUPPLIERS OR ITS LICENSORS BE LIABLE TO ANY USER, OR ANY THIRD PARTY ON ACCOUNT OF USER'S OR ANY PARTY'S USE OR MISUSE OF OR RELIANCE ON THE INTERNET SERVICES ARISING FROM ANY CLAIM RELATING TO THE SUBJECT MATTER HEREOF. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF THE BVM, OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE

INTERNET SERVICES, FROM INABILITY TO USE THE INTERNET SERVICES, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE INTERNET SERVICES (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). THIS LIMITATION SHALL ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY REASON OF OTHER SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE INTERNET SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED IN THE INTERNET SERVICES, AS WELL AS BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH OR ADVERTISED ON THE INTERNET SERVICES. THIS LIMITATION SHALL ALSO APPLY, WITHOUT LIMITATION, TO THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, OR LOST DATA. SUCH LIMITATION SHALL FURTHER APPLY WITH RESPECT TO THE PERFORMANCE OR NONPERFORMANCE OF THE INTERNET SERVICES OR ANY INFORMATION OR MERCHANDISE THAT APPEARS ON, OR IS LINKED OR RELATED IN ANY WAY TO, THE INTERNET SERVICES. SUCH LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS OR ITS LICENSORS, BE HELD LIABLE FOR ANY DELAY OR FAILURE IN PERFORMANCE RESULTING DIRECTLY OR INDIRECTLY FROM ACTS OF NATURE, FORCES OR CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, INTERNET FAILURES, COMPUTER EQUIPMENT FAILURES, TELECOMMUNICATION EQUIPMENT FAILURES, OTHER EQUIPMENT FAILURES, ELECTRICAL POWER FAILURES, STRIKES, LABOR DISPUTES, RIOTS, INSURRECTIONS, CIVIL DISTURBANCES, SHORTAGES OF LABOR OR MATERIALS, FIRES, FLOODS, STORMS, EXPLOSIONS, ACTS OF GOD, WAR, GOVERNMENTAL ACTIONS, ORDERS OF DOMESTIC OR FOREIGN COURTS OR TRIBUNALS, NON-PERFORMANCE OF THIRD PARTIES, OR LOSS OF OR FLUCTUATIONS IN HEAT, LIGHT, OR AIR CONDITIONING.

#### INDEMNIFICATION

USER AGREES TO HOLD HARMLESS AND INDEMNIFY THE BVM, ITS OWNERS, ITS AFFILIATES, ITS EMPLOYEES, ITS AGENTS, ITS SUPPLIERS AND LICENSORS FOR FROM OR AGAINST ANY THIRD PARTY CLAIM ARISING FROM OR IN ANY WAY RELATED TO USER'S USE OF THE INTERNET SERVICES, INCLUDING ANY LIABILITY OR EXPENSE ARISING FROM ALL CLAIMS, LOSSES, DAMAGES (ACTUAL AND CONSEQUENTIAL), SUITS, JUDGMENTS, LITIGATION COSTS AND ATTORNEYS' FEES, OF EVERY KIND AND NATURE. IN SUCH A CASE, THE BVM WILL PROVIDE USER WITH WRITTEN NOTICE OF SUCH CLAIM. SUIT OR ACTION. UNDER

NO CIRCUMSTANCES SHALL THE BVM BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT IN ANY WAY FROM USER'S USE OF OR INABILITY TO USE THE INTERNET SERVICES TO ACCESS THE INTERNET OR ANY PART THEREOF, OR USER'S RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE INTERNET SERVICES, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE. USER AGREES TO INDEMNIFY AND HOLD HARMLESS THE BVM, INCLUDING ITS OWNERS, AFFILIATES, AGENTS, EMPLOYEES AND CONTRACTORS, FOR, FROM OR AGAINST ANY CLAIM, LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATED TO USER'S USE OF THE INTERNET SERVICES, ANY MATERIALS DOWNLOADED OR UPLOADED THROUGH THE INTERNET SERVICES, ANY ACTIONS TAKEN BY USER IN CONNECTION WITH USER'S USE OF THE INTERNET SERVICES, ANY VIOLATION OF ANY THIRD PARTY'S RIGHTS OR ANY VIOLATION OF LAW OR REGULATION, OR ANY BREACH OF THE FOREGOING.

DISPUTE RESOLUTION; ARBITRATION; CLASS ACTION WAIVER.

USER AND BVM AGREE TO ARBITRATE – RATHER THAN LITIGATE IN COURT – any and all claims or disputes between User and BVM (including any owners, affiliates, officers, directors, employees, or agents of BVM) that arise out of or in any way relate to this AUP. The arbitration between User and BVM will be binding and judgment on the award rendered in the arbitration may be entered in any court having jurisdiction thereof.

In arbitration, there is no judge and no jury, and review of arbitration decisions in the courts is very limited. Instead, disputes will be resolved by an arbitrator, whose authority is governed by the terms of this AUP. User and BVM agree that an arbitrator may only award such relief as a court of competent jurisdiction could award, limited to the same extent as a court would limit relief pursuant to the terms of this AUP. An arbitrator may award attorneys' fees and costs if a court would be authorized to do so, and may issue injunctive or declaratory relief if that relief is required or authorized by the applicable law, but that injunctive or declaratory relief may not extend beyond User or User's dealings with the AUP. Discovery may be limited in arbitration, and procedures are more streamlined than in court. Notwithstanding this arbitration agreement, User and BVM may bring appropriate claims against each other in small claims court, if the claims fall within the small claims court's jurisdiction, or before the Federal Communications Commission, the relevant state public utilities commission, or any other federal, state, or local government agency authorized by law to hear user's claims.



Class Action Waiver: User and BVM agree that all claims or disputes between User and BVM will be arbitrated individually, and that there will be no class, representative, or consolidated actions in arbitration. If User or BVM brings a claim in small claims court, the class action waiver will apply, and neither of us can bring a claim on a class or representative basis. Furthermore, neither User nor BVM may participate in a class or representative action as a class member if the class action asserts claims that would fall within the scope of this arbitration agreement if they were directly asserted by User or BVM. Notwithstanding the foregoing, this arbitration agreement shall not prohibit User or BVM from participating in any judgment or settlement in any litigation brought by a federal, state, or local government on behalf of User or BVM, excluding litigation brought by any relator or party in its capacity as a private attorney general. User and BVM both agree that this class action waiver is an essential part of our arbitration agreement and that if this class action waiver is found to be unenforceable by any court or arbitrator then the entire arbitration agreement set forth herein will not apply to any claim or dispute between User and BVM, except for the provision, below, waiving the right to jury trial. This class action waiver may not be severed from our arbitration agreement.

Informal Dispute Resolution: User and BVM agree to try to resolve disputes informally before resorting to arbitration. If the dispute cannot be resolved by telephone, User agrees to notify BVM of the dispute by sending a written description of User's claim to Bella Vista Motel, 1101 East Fry Boulevard, Sierra Vista, AZ 85635-2696 so that BVM can attempt to resolve it with User. If BVM does not satisfactorily resolve User's claim within 30 calendar days of receiving notice of it, then User may pursue the claim in arbitration. Neither User nor BVM may initiate arbitration without first providing the other notice of the claim and following the informal dispute resolution procedure provided in this paragraph.

Arbitration Procedures: User and BVM agree that this Agreement affects interstate commerce and that the Federal Arbitration Act applies. All arbitrations shall be conducted by the American Arbitration Association ("AAA"). The AAA's rules are available on its website at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. If the claim asserted in arbitration is for less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply. If the claim asserted is for \$75,000 or more, the Commercial Arbitration Rules will apply. If there is a conflict between the AAA's rules and this dispute resolution agreement, this dispute resolution agreement shall control. To initiate arbitration, User must send a letter requesting arbitration and describing User claims to Bella Vista Motel, 1101 East Fry Boulevard, Sierra Vista, AZ 85635-2696. User must also comply with the AAA's rules regarding initiation of arbitration. BVM will pay all filing fees and costs for commencement of an arbitration, but User will be responsible for his or her own attorneys' fees and costs unless otherwise determined by the arbitrator pursuant to the terms of this agreement or applicable law. The arbitration will be held in a mutually convenient location. If User seeks

less than \$10,000, then User may chose to hold the arbitration in person, via phone, or to have it decided based on written submissions.

Jury Trial Waiver: If for any reason this arbitration agreement is found to be unenforceable, including without limitation, that the class waiver is found unenforceable User and BVM expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY. This means that a Judge rather than a Jury will decide disputes between User and BVM if, for any reason, the arbitration agreement is not enforced.

Survival: This dispute resolution provision survives the termination of the Internet Services by BVM and the termination of the applicability of the AUP. If User brings a claim against BVM after termination of User contract that is based in whole or in part on events or omissions that occurred while you were a User, this dispute resolution provision shall apply.

Miscellaneous: The AUP will be governed by and construed in accordance with the laws of the state of Arizona, without giving effect to its conflict of laws provisions. This AUP constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes and replaces any and all prior written or oral agreements. In the event that any portion of this AUP is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of its provisions shall remain in full force and effect. Nothing contained in this AUP shall be construed to limit BVM's rights and remedies available at law or in equity. BVM's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this AUP. This AUP may not be assigned or transferred by User. This AUP is freely assignable by BVM to third parties.