Bulk Sales Agreement Terms & Conditions

1. Customer Obligations

1.1 Bulk Billing. Customer acknowledges and agrees that it will pay the Monthly Recurring Charge without regard to the number of Residents in the Project that actually elect to receive the Services from Company. Company will treat each individual Resident that elects to receive the Services as the Customer of record for such services. Such Resident, and not the Customer, shall be responsible for equipment provided by Company, which may include without limitation a gateway, set top box(es), network optical device and/or optical network terminal ("End-User Equipment"). In the event such End User Equipment is not returned to Company upon expiration or termination of this Agreement, or if such equipment is lost, stolen or damaged, Company will charge the Resident an equipment charge consistent with market rate. Customer is responsible for applicable taxes, shipping, handling, tariffs, telecommunication surcharges, governmental charges, broadcast fees and other charges applicable to the Services provided under this Agreement ("Applicable Fees"). During the term of this Agreement, Company will issue a bill to individual Residents for the Services (and for any other services purchased by the Resident) which will reflect an offsetting credit for the MRC and Applicable Fees paid by Customer for the Services (i.e., the net charge for the Services will be $0.00). In the event of an increase in Applicable Fees charged to Company, Company may pass on such increase to Customer. Payments are due within thirty (30) days of the date of the invoice ("Due Date") and any payment not received by the Due Date will be subject to a late payment charge of the lesser of one percent (1%) per month or the maximum amount allowed by law. Late payment charges will be assessed monthly against the amount due.

1.2 Access.

(A) During the term of this Agreement, Customer grants to Company the right of access to the Property twenty-four (24) hours a day, seven (7) days a week as necessary to provide the Services and fulfill Company's obligations under this Agreement, subject to Residents' privacy rights and relevant Project rules with respect to access to the Residents' units. Such right of access includes the adequate access to the common areas and common utility easements for installation (e.g., installation of cable, conduits or other equipment), operation, maintenance, inspection, replacement, removal, and disconnection of the Services. Following execution of this Agreement, Customer and Company will coordinate an on-site walk through of the Property in order to establish an implementation plan; ramp-up schedule, if applicable; and anticipated Service Activation Date.

(B) If requested by a Resident that subscribes to the Services, and with written authorization from the Resident, Customer will provide access to that Resident's unit for installation or repair of the Services by Company or its agents. Company will defend, indemnify and hold Customer and its property manager harmless from any claim of loss or damage directly arising out of Company's negligence or willful misconduct while being provided such access by Customer (such indemnity to survive the expiration or termination of this Agreement).

1.3 Information/Cooperation. Customer will (subject to Company providing an adequate supply of materials, where required):

(A) Upon execution of this Agreement, provide to each Resident a copy of the information most recently provided by Company outlining the Services and other telecommunications and information services provided by Company and its affiliates; and

(B) Cause its on-site property management personnel to cooperate fully with Company in all reasonable respects, including, without limitation, providing Company's promotional materials to Residents of the Property promptly upon such Resident's acquisition of a unit in the Property and at other times as reasonably requested by Company.

2. Administration

2.1 Indemnity.

(A) Company will, subject to Section 2.2., indemnify, defend, and hold harmless Customer and its property manager and their respective officers, directors, partners, and employees from all claims for bodily injury and damage to person or property arising out of or resulting from Company's provision of the Services, to the extent proximately caused by the gross negligence or willful misconduct of Company's employees, contractors or agents in performing services under this Agreement. This indemnity does not extend to any portion of the injury, death or damage caused by the sole or contributing negligence or willful misconduct of Customer, its Residents, its property manager, their respective employees, contractors, or agents or third parties not affiliated with Company.

(B) Customer will, subject to Section 2.2., indemnify, defend, and hold harmless Company and its affiliates, and their respective officers, directors, contractors, agents and employees from all claims for bodily injury, or damage to person or property arising out of the gross negligence or willful misconduct of Customer, its Residents, its property manager or their respective employees, contractors or agents. This indemnity does not extend to any portion of injury, damage or death caused by the sole or contributing negligence of Company, its affiliates, or their respective employees, contractors or agents.

(C) These indemnities do not apply unless the Party to be indemnified gives written notice to the indemnifying Party within thirty (30) days of receipt of notice of any claim, and informs indemnifying Party in writing of any subsequent written communications regarding the claim, and fully cooperates with indemnifying Party in the defense of the claim. Indemnifying Party will have sole control of the defense of the claim and of all negotiations for its settlement or compromise. The indemnities in this Section 2.1. will survive the expiration or termination of the Agreement.

2.2 Limitation of Liability.

(A) Under no circumstances will either company or Customer be liable for incidental, consequential, punitive, indirect, or special damages, notwithstanding their foreseeability or disclosure by Customer to company or vice versa, including, but not limited to, damages arising from delay or loss of data, profits, or goodwill. The entire liability of company under this agreement, for any claim, whether in contract or in tort, shall be limited to the total amount paid by Customer to company in the preceding one (1) year from the date of such claim. Company will bear no liability arising out of the use of the services in connection with life support systems or devices. Company may from time to time provide advice, make recommendations, or supply other analysis to Customer related to the services provided under this agreement, and, while company will use reasonable efforts in this regard, Customer acknowledges and agrees that this limitation of liability will apply to company's provision of such advice, recommendations, and analysis. Company expressly disclaims use of the services as a component in life support devices or systems.

3. Facilities.

3.1 Existing Facilities. Customer grants to Company the right to access, operate, remove, or utilize in any manner deemed necessary by Company, in Company's discretion, any wiring, conduit, hardware, infrastructure, power facilities, pathways and other equipment and facilities existing at the Property prior to the Effective Date (the "**Existing Facilities**"). Customer also grants Company access to and use of an electrical power source. Company shall have the right to market and provide optional services (i.e., services not included in the Services provided under this Agreement) directly to Residents, and Customer grants to Company, at no additional cost, the right to use the Existing Facilities, the components of the System, and any existing interior wire to distribute such optional services during the term of this Agreement.

3.2 Suitable Facilities. Customer shall provide suitable facilities (including Customer-owned equipment and/or capacity), and the necessary space, support structures, power and environmental conditions required for the proper installation and operation of System used to deliver the Services ("**Suitable Facilities**"). This Agreement and the Services are contingent upon availability of such Suitable Facilities. In the event Suitable Facilities are not available to provide Service at the Project, Company will propose a reasonable alternate solution ("**Proposed Solution**") to be implemented by Company at Company's sole cost and expense. If Customer finds the Proposed Solution unacceptable, Customer shall pay the difference between the cost of the Proposed Solution and Customer's alternate solution. By way of example, if Customer's support structures are not suitable for the proper installation and operation of Services, then Company will propose a reasonable alternate solution at no additional cost to Customer, including running exposed cabling along ceilings and walls. However, if Customer desires other solutions that require installation of molding, conduit or other facilities, then Customer will be responsible for such additional charges.

3.3 System. Company will install, repair, maintain and operate the System, which consists of (i) all internal wiring, up to and including the network interface device or optical network terminal at each unit ("**Demarcation Point**"); (ii) all external wiring, conduit, hardware, infrastructure, and pathways (including without limitation molding and ductwork); (iii) all other equipment and facilities up to and including the Demarcation Point that are reasonably necessary to provide the Services to the Property or any other properties that can be served by the System, that (a) Company installs, constructs or upgrades on the Property, or (b) the Company provides to Customer for installation at the Property. The System shall be and remain the property of Company and may be replaced by Company at any time during this Agreement with comparable equipment; provided however, that it is expressly understood and agreed that no portion of the Project, including, without limitation, the Existing Facilities, common elements, limited common elements, and units shall be or become the property of Company. Company will not be responsible for unusual expenses that may be required to find or establish a reasonable Demarcation Point.

3.4 Maintenance. Company shall maintain the System and Existing Facilities used by Company in good condition and repair during the term of this Agreement. In the event Customer or its agents, employees, or contractors damage the System or Existing Facilities, Customer agrees to pay the actual cost of repairing the System. Neither Customer, nor anyone acting on its behalf, will tap, tamper with, interface with, connect to, or otherwise interfere with the System without written permission of Company. Customer shall promptly notify Company of any noticeable defects in the System or the System's operations.

3.5 Common Areas and Complimentary Accounts. In the event Services include provision of service to common areas or limited common areas (e.g., lobby, gym) or complimentary accounts (e.g., property manager's office) and Company is unable to identify a reasonable pathway to such service area(s), Customer shall be responsible for the costs associated with establishing such reasonable pathway. Customer also agrees to pay the recurring costs associated with the provision of electrical power necessary to operate any of Company's equipment or facilities installed within or attached to the common areas or limited common areas of the Property.

4. Advertising.

4.1 Company and Customer may not use each other's name or the name of any affiliated company or use any photographs or likenesses of the Property or of Company property, personnel or assets in each other's advertising without each other's prior written consent. Notwithstanding the foregoing, Company may use Customer's name in listings of its Customers.

5. Consistency with Other Obligations.

5.1 Company and Customer each represent and warrant to each other that:

(A) This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligations enforceable in accordance with its terms;

(B) No consent or approval of any other person or entity to the execution, delivery or performance of this Agreement is required; and

(C) Neither the execution of this Agreement nor the performance of its obligations by it will conflict with or result in a breach of the terms, conditions or provisions of or constitute a default under any document to which it is a Party.

5.2 Customer additionally represents and warrants to Company that:

(A) There is no pending or threatened litigation known to Customer affecting Customer's title to the Property;

(B) The Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding;

(C) The Property is not the subject of a purchase contract; and

(D) Customer owns and/or has the right to grant to Company the right to use all parts of the system used to deliver the Services that are not owned by Company (including Existing Facilities), if any.

6. TERMINATION

6.1 Events of Default. The following are "Events of Default" under this Agreement:

(A) Customer or Company fails to meet, comply with, or perform any material term, provision, covenant, agreement or obligation under this Agreement within the time limits and in the manner required in this Agreement and, unless otherwise provided for in this Agreement, after written notice from the non-defaulting Party the default remains uncured for a period of thirty (30) days; provided, however, that if the allegedly defaulting Party is diligently attempting to cure the alleged default which is not reasonably able of being cured within such thirty (30) day period, that Party will have a reasonable time to cure the default;

(B) The filing of a petition, case or other proceeding by or against a Party as a debtor under any applicable bankruptcy, reorganization or other similar laws which is not permanently dismissed or discharged within one hundred twenty (120) days following the date of filing; or

(C) Customer or Company is adjudged insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of the creditors.

6.2 Termination.

(A) This Agreement will terminate upon the first to occur of the following:

(A) Proper written notice by either Party of intent to terminate at the end of the Initial Term or any successive extension period at least ninety (90) days before the end of the Initial Term or at least ninety (90) days before the end of any successive extension period;

(B) The mutual written consent of the Parties hereto; or

(C) Termination of this Agreement by the non-defaulting Party, in the event of the occurrence of an Event of Default by the other Party, by giving written notice to the defaulting Party.

(B) If Company determines that it is not reasonably feasible to provide one or more Services of this Agreement due to factors beyond Company's reasonable control (including without limitation congested conduits, unacceptable wiring, inability to find suitable housing for on-premise equipment, or business necessity), then Company may terminate provision of the affected Service(s) without any termination liability or further obligation to or by Company; provided that Company will first use commercially reasonable efforts to offer a comparable replacement service.

(C) In the event of termination of one or more Services in accordance with Section 6.2.B above, the parties will negotiate in good faith a new bulk rate pricing of the Agreement covering the remaining Services (if any).

6.3 Termination Liability. Customer acknowledges that Company will be required to invest substantial resources, money, and effort to meet its obligations to Customer under this Agreement, and that Company must recoup its investment by providing Services to Residents throughout the term of this Agreement and by collecting the Monthly Recurring Charge payments from Customer. If, during the Initial Term or any renewal term of this Agreement, Company terminates this Agreement due to an Event of Default by Customer, then Customer will promptly pay to Company an amount equal to 100% of the Monthly Recurring Charge multiplied by the number of months remaining in the term, together with any taxes, telecommunications surcharges, and other charges applicable to such amount. The early termination liability agreed to in this Section 6.3 is not a penalty but constitutes reasonable liquidated damages in the event of such termination because damages would likely be significant and difficult to calculate with certainty.

6.4 Survival of Payment Obligations. Any payment obligation or any amount of indebtedness which has accrued prior to the date of termination, and which is payable by one Party to the other will survive the expiration or termination of this Agreement.

7 MISCELLANEOUS

7.1 **Delayed Performance.**

(A) If performance under this Agreement is interfered with by acts of God, war, labor disruptions (including strikes), inability or failure of a third party to provide equipment or services, supply disruptions, riot, embargo, acts of a federal, state or local government, agency, or court, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault of the Party affected, the affected Party, upon giving prompt notice to the other Party, will be excused from such performance to the extent of such interference (and the other Party will likewise be excused from its performance), provided that the Party so affected will use its reasonable best efforts to remove such causes of nonperformance and both Parties will resume performance under this Agreement whenever such causes are removed or cease.

(B) In the event of a service outage, Hawaiian Telcom shall respond to such outage and, if necessary, dispatch a technician onsite within seventy-two (72) hours of receiving notice of the outage.

If Hawaiian Telcom fails to respond or arrive onsite within this seventy-two (72) hour period, and Hawaiian Telcom's technician determines that the outage was caused by Hawaiian Telcom or by equipment provided by Hawaiian Telcom, then Hawaiian Telcom shall issue a credit to the Association (AOAO). Such credit shall be calculated proportionally based on the monthly recurring rate for the affected services, the number of days such services were interrupted, and the number of Residents without service.

No credit shall be due under this section if the outage is determined to be caused by: (a) the Association, its agents, or its equipment; (b) any resident or resident-owned equipment; (c) any third party or third-party equipment; (d) scheduled maintenance with prior notice; or (e) any Force Majeure event.

7.2 **Dispute Resolution.**

(A) Except for an action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement.

(B) In the event of a dispute under this Agreement, at the written request of a Party, each Party will appoint a representative to meet and negotiate in good faith to resolve the dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations will be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which will not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

(C) If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the Parties will submit the dispute to binding arbitration by a single arbitrator pursuant to the Arbitration Rules, Procedures & Protocols, then in effect, of Dispute Prevention & Resolution, Inc. ("DPR"), and to Hawaii Revised Statutes, Chapter 658A, as amended. The arbitrator will be selected from the slate of arbitrators provided by DPR under DPR's standard procedure for such selection. In the event that DPR ceases to provide arbitration services in Honolulu, Hawaii, then an alternative arbitration services provider will be selected by mutual agreement of the Parties. Discovery will be controlled by the arbitrator and will be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party will so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, and requests for admission. Each Party is also entitled to take the oral deposition of one individual of the other Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing will be commenced within sixty (60) days of the agreement to arbitrate. The arbitration will be held in Honolulu, Hawaii. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator will rule on the dispute by issuing a written opinion within thirty (30) days after the close of the hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

(D) Each Party will bear its own costs and expenses of these dispute resolution procedures. A Party seeking discovery will reimburse the responding Party the cost of production of documents (to include search time and reproduction costs). The Parties will equally split the fees of the arbitration and the arbitrator.

7.3 Modifications. This Agreement cannot be modified or changed except in writing signed by both Parties.

7.4 Waiver. Each Party reserves the right, from time to time, to waive enforcement of any terms and conditions of this Agreement. No waiver by a Party of any term or condition of this Agreement will constitute a waiver by such Party of any prior, concurrent, or subsequent breach or default of the same or any other term or condition of this Agreement.

7.5 Assignment.

(A) This Agreement is binding upon and inures to the benefit of the Parties hereto, their successors in interest, and permitted assigns. Customer's rights and obligations under this Agreement are covenants that run with the land and shall be assigned to and binding upon any subsequent owner of the Property. Customer agrees to disclose this Agreement to any prospective purchaser of the Property and to reference the Agreement in any deed or other instrument of conveyance. Notwithstanding any assignment or transfer of the Property, if a subsequent purchaser or transferee fails or refuses to assume the obligations under this Agreement, Customer shall remain jointly and severally liable for all obligations hereunder until such time as a successor expressly assumes the obligations in a written instrument delivered to and accepted by Company. This provision shall survive any sale, transfer, or conveyance of the Property and shall be binding upon Customer and its heirs, successors, and assigns.

(B) Company will have the right to assign its rights and obligations under this Agreement, or any part thereof, upon written notice to Customer and, in the event of assignment other than (i) by operation of law, (ii) to an affiliate, or (iii) in connection with the sale of all or substantially all of equity or assets of Company, upon Customer's written consent which may not be unreasonably withheld.

7.6 Severability. In the event that any part of this Agreement is held to be invalid or unenforceable, or in the event a change in regulations, law or tariff render any part of this Agreement invalid or unenforceable, the entire Agreement will not fail on account thereof, and the balance of the Agreement will continue in full force and effect.

7.7 Headings. Any section, paragraph or other heading contained in the Agreement is for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all such counterparts will constitute one and the same instrument.

7.9 Litigation. In any litigation to enforce, interpret or rescind the terms of this Agreement, the prevailing Party will be entitled to recover, in addition to such other relief, all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees for services before trial, at trial and on any appeal therefrom, incurred by the prevailing Party.

7.10 Time of Essence. Time is of the essence with respect to all obligations to be performed by either Party pursuant to this Agreement.

7.11 Notices. All notices, demands, requests and other communications required or permitted under this Agreement will be in writing, and will be deemed to be delivered when actually received or, if earlier, one (1) business day after delivery to a nationally recognized overnight courier service, or three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage fully prepaid, addressed to the addressee at its address set forth below or at such other address as such Party may have specified therefore by notice delivered in accordance with this Section and actually received by addressee. All notices will be sent to the following addresses unless modified in writing:

Hawaiian Telcom Services Company, Inc.	**<<Property Name>> AOAO**
1177 Bishop Street	______________________________
Honolulu, HI 96813	______________________________
Attn: Manager, MDU Sales	Attn: Property Manager

7.12 Governing Law. This Agreement will be governed by Hawaii law without regard to any choice of law rules or principles. The Parties consent to jurisdiction in the state and federal courts of Hawaii.

7.13 Construction of Agreement. All regulated services are provided in accordance with applicable laws, tariffs and regulations, and this Agreement will at all times be construed to be consistent with those laws, tariffs and regulations. To the extent that the Services include regulated services, then this Agreement remains subject to and is expressly conditioned upon Company obtaining any necessary regulatory approval to offer said Services. In the event this Agreement or any of the provisions hereof, or the operations contemplated, are found to be inconsistent with or contrary to any such law, tariff or regulation, that law, tariff or regulation will be deemed to control and, if commercially practicable, this Agreement will be regarded as modified accordingly and will continue in full force and effect as so modified. If such modified Agreement is not commercially practicable in the opinion of either Party in its sole discretion, the Parties agree to meet promptly and discuss in good faith any necessary amendments or modifications to this Agreement. If the Parties are unable to agree on necessary amendments or modifications in order to comply with the law, tariff or regulation, then either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party.

7.14 Independent Contractor. Each Party is an independent contractor and is not an agent or employee of, or a joint venture or partner with, the other Party.

7.15 Confidentiality. Except as required by law or regulation, Company and Customer will (a) keep confidential and not disclose to any other party either this Agreement, any of its terms, or any other information that is provided by one Party to the other and marked as Proprietary or Confidential or which, given the nature of the information or the circumstances surrounding its disclosure, in the exercise of reasonable business judgment should be considered to be confidential (collectively, "Confidential Information"), (b) not disclose or use any such Confidential Information for any purpose other than performance of this Agreement, and (c) not make any public announcement or press release about this Agreement without the other Party's prior approval. Notwithstanding the foregoing, each Party will be entitled to disclose the Confidential Information to its affiliates, officers, employees, directors, financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the Property, in each case on a need-to-know basis and provided that any such recipient is obligated to satisfy the confidentiality obligations of this Agreement. The provisions of this Section 11.15 will survive the expiration or termination of the Agreement.

7.16 Updates. If the Services include TV, Company reserves the right to migrate Residents' TV Service, including set-top-box equipment, as applicable, onto an alternative platform with no change to the Residents' TV package upon sixty (60) days' prior notice. Such updated TV Service may require Residents to have Fioptics High Speed Internet.