

7729281

## MDU SERVICE AGREEMENT - HOSPITALS

THIS AGREEMENT (this "Agreement") dated as of July 26, 2000 is made and entered into by and between TCI Cablevision of Utah, Inc. ("Company"), and Sarah Daft Home ("Owner"), which owns or has control over certain real estate and improvements commonly known as Sarah Daft Home located at 737 So. 1300 E., Salt Lake City, Utah 84102 (the "Premises"), consisting of 36 outlets located in 24 patient units and 12 common areas (including, without limitation, lounges, hallways and lobbies, hereafter "Common Rooms"), plus any such rooms added or constructed in the future (collectively, the "Rooms"). A legal description of the Premises is attached hereto as Exhibit A. Company owns and operates a cable television system in Salt Lake City (the "System") pursuant to a franchise agreement, permit or other legal authority to operate the System (as extended or renewed from time to time, the "Franchise"). Owner and Company desire to provide for Company's access to the Premises in order to install the equipment necessary to provide multi-channel video programming and any other communications and information services that Company may lawfully provide (the "Services") to the Premises, on the terms and conditions provided herein. Therefore, the parties agree as follows:

- RIGHT OF ACCESS; EASEMENT.** Owner hereby grants, bargains and conveys to Company an irrevocable easement in gross across, under and over the Premises as necessary or desirable for the routing, installation, maintenance, service and operation of the Equipment (as hereinafter defined), and the marketing and provision of the Services. Owner agrees that Company may from time to time enter into various agreements or arrangements with its approved designees, agents or authorized vendors (collectively, the "Agents") and access to the Premises granted by Owner pursuant to this Section will extend to such Agents. After the Premises have been wired for the provision of Services, Owner will provide Company's employees and Agents access to the Premises at reasonable times for the exercise of its easement rights hereunder. In addition to the other rights granted by Owner hereunder, upon termination of this Agreement, Owner hereby grants, bargains and conveys to Company the right to enter the Premises in order to remove the Equipment from the Premises if Company so desires.
- SERVICES.** Company agrees to provide the Services to the Rooms on the Premises. Owner will pay Company a monthly service fee of \$10.50 per unit and common area for a total monthly billing of \$420.00, plus applicable franchise fees, governmental access fees, and sales taxes ("Monthly Service Charge"). See attached Addendum for 24 month rent up billing schedule. Company may increase the Monthly Service Charge upon 30 days' notice to Owner. The initial Monthly Service Charge is guaranteed not to increase for 12 months from the date of the Agreement, and may increase no more than the same percentage as the residential rate for like services in the same franchise area during any twelve month period thereafter. All statements rendered pursuant to this Agreement will be due when rendered and will be subject to late charges of 1% per month if not paid within 15 days of receipt thereof. The Services will initially include those listed on Exhibit B attached hereto and incorporated herein by this reference. Company in its discretion may make additions, deletions or modifications to its program line-up and/or the other Services. Premium services may not be shown in Common Rooms of the Premises.
- OTHER SYSTEMS.** In consideration of Company's investment in the Equipment and other valuable consideration, for a period of time ending upon the earlier of (a) the date of termination of this Agreement and (b) the 7 anniversary of the effective date of this Agreement, Owner will not, without the prior written consent of Company, operate or install or permit the operation or installation of any other antenna, receiver, converter, cable or other signal amplification system on the Premises for use in connection with television or radio equipment.
- TERM.** This Agreement will be effective upon the date of activation and continue for a period of 7 years (the "Initial Term") and will automatically renew for additional terms of 1 years (each a "Renewal Term"), unless either party gives the other written notice of non-renewal at least six months prior to the end of the Initial Term or then-effective Renewal Term, as appropriate.

COMPANY AND OWNER AGREE TO THE ADDITIONAL TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT AND OTHERWISE APPENDED HERETO. THE PARTIES HAVE EXECUTED THIS AGREEMENT BY THEIR DULY AUTHORIZED REPRESENTATIVES.

## OWNER:

Sarah Daft Home

By: Ramona Linnell  
 Print Name: Ramona Linnell  
 Title: \_\_\_\_\_  
 Address: 737 So. 1300 E.  
Salt Lake City, Utah 84102  
 Telephone: 801-582-5104  
 Telecopy: \_\_\_\_\_

## COMPANY:

TCI Cablevision of Utah, Inc.

By: Gary Boles  
 Print Name: Gary Boles  
 Title: Regional Vice President  
 Address: 1245 E. Brickyard Rd. #400  
Salt Lake City, Utah 84403  
 Telephone: \_\_\_\_\_  
 Telecopy: \_\_\_\_\_

STATE OF Utah )  
 COUNTY OF Salt Lake ) ss.  
 This instrument was acknowledged before me on July 26, 2000 by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.  
 Given under my hand and seal of office.  
 My commission expires: Oct. 12, 2000  
Dawn N. Weiss  
 Notary Public  
 [Seal] Title

STATE OF Utah )  
 COUNTY OF Salt Lake ) ss.  
 This instrument was acknowledged before me on 7/31, 2000 by Gary Boles as Regional V.P. of TCI Cablevision of Utah, Inc.  
 Given under my hand and seal of office.  
 My commission expires: 11-4-2003  
Marnie Jensen  
 Notary Public  
 [Seal] Title



DAWN N. WEISS  
 Sarah Daft Home  
 Notary Public  
 State of Utah  
 My Commission Expires October 12, 2000  
 737 S. 1300 E., SLC, UT 84102



NOTARY PUBLIC  
 MARNIE JENSEN  
 1350 East Miller Ave.  
 Salt Lake City, UT 84106  
 My Commission Expires  
 November 4, 2003  
 STATE OF UTAH

## ADDITIONAL TERMS AND CONDITIONS

### A. DAMAGE TO THE PREMISES OR EQUIPMENT; INDEMNIFICATION; SURVIVAL.

(i) Company will repair any damage to the Premises caused by Company, its employees, or the Agents. Company will hold harmless and indemnify Owner from and against any and all losses or damages (including reasonable attorneys' fees) resulting from Company's or the Agents' installation, maintenance, service, removal or operation of the Equipment or any other equipment of Agents, except loss or damage arising from any negligent or intentional act or omission of Owner or its agents or employees, or any patient of the Premises.

(ii) Owner will repair any damage to the Equipment caused by Owner, its agents, or employees, or any patient of the Premises. Owner will hold harmless and indemnify Company from and against any and all losses or damages (including reasonable attorneys' fees) arising from or with respect to (a) any negligent or intentional act or omission of Owner or its agents or employees, or any patient of the Premises, or (b) any claim, demand, legal proceeding or similar action instituted by any person or entity providing multi-channel video programming or other services similar in nature to the Services provided to the Premises as of or prior to the date of this Agreement, or its successor or assign.

(iii) The rights and obligations set forth in this Section A (indemnification for events occurring during the term of the Agreement) and the last sentence of Section 1 (permitting removal of Equipment) will survive termination of this Agreement.

### B. INSURANCE. Company will maintain general liability and property damage liability insurance relating to its activities hereunder.

C. **EQUIPMENT.** Company may install, maintain, service, operate and upgrade on the Premises coaxial cable and/or fiber optic line, internal wiring, amplifiers, converters and other equipment necessary for the provision of the Services (the "Equipment"). The Equipment will at all times be owned by, and remain the property of, Company, whether or not attached to or incorporated in the Premises, and Owner will not have or obtain any right, title or interest therein. The Equipment does not constitute a fixture of the Premises. Owner will not, and will not permit any third party to, attach to or use in any manner the Equipment or any portion thereof. Owner will have no obligation to service or maintain the Equipment. Company will have the right to use other telecommunications equipment or wiring on the Premises, regardless of ownership, for delivery of the Services. Owner shall provide without charge adequate space and electricity for the Equipment.

D. **FORCE MAJEURE.** Neither party will be deemed to be in breach of this Agreement if it is unable to perform its obligations hereunder as a result of a failure of equipment or facilities, the occurrence of an event of "force majeure," or other causes beyond such party's reasonable ability to control.

E. **SUCCESSORS TO BOTH PARTIES; RELATED PARTIES TO COMPANY.** The benefits and obligations of this Agreement will inure to and be binding upon the successors, assigns, heirs, and personal representatives of Company and Owner. If Owner sells, transfers or encumbers the Premises, any such sale, transfer or encumbrance will be subject to this Agreement, which touches and concerns and runs with the land. The rights and obligations of Company under this Agreement may be enjoined, enforced or performed, as the case may be, by Company or any other entity controlling, controlled by or under common control with Company.

F. **TERMINATION.** This Agreement may be terminated prior to expiration of its term (a) by either party on 30 days' written notice, in the event of material breach of this Agreement, unless the other party cures or commences to cure such breach during such 30-day period and diligently proceeds with such cure; or (b) by Company upon at least 60 days' written notice if Company is unable to continue distribution of the Services due to any law, rule, regulation, judgment, contract with third party or other reason beyond the reasonable control of Company. In no event will either party be liable to the other for incidental or consequential damages.

G. **LEGAL STATUS.** This Agreement does not create any agency, employment, joint employer, joint venture or partnership between Company and Owner. Neither party will have the right, power or authority to act for the other in any manner.

H. **ENGINEERING REVIEW.** Activation and installation of the Services are subject to engineering review by Company, including testing of equipment or facilities not provided by Company. If Company determines that activation of the Services will result in unanticipated expenses or that existing equipment is deficient, Company will have the right to terminate this Agreement upon written notice to Owner. Upon such termination, Company will refund to Owner any amounts prepaid hereunder in accordance with Company's refund policies.

I. **CONVERTER BOXES.** Company has delivered to Owner the number of converter boxes for placement in patient rooms set forth in the first paragraph of this Agreement. Such converter boxes shall be considered Equipment. Owner shall be responsible for any loss of or damage to the Equipment.

J. **CONFIDENTIALITY.** Owner and/or any person signing on behalf of Owner hereby agrees to not, directly or indirectly, disclose to any third party the terms of this Agreement or any Addendum, except as may be required by law. Notwithstanding the foregoing, the terms of this Agreement may be disclosed by Owner, upon notice to Company, to a purchaser or bona fide potential purchaser of the Premises.

K. **LIQUIDATED DAMAGES.** In view of the difficulty of determining the amount of damages which may result from Owner terminating this Agreement without adequate cause, Company may elect as its remedy payment from Owner to Company, not as a penalty but as liquidated damages, an amount equal to the product of (i) 75% of the Monthly Service Charge in effect immediately preceding the effective date of such termination, multiplied by (ii) the number of full or partial months remaining in the term, including any renewal term, if applicable.

L. **LEGAL ACTIONS.** If legal action is necessary to enforce any provision of this Agreement or any agreement relating hereto, the prevailing party in such action will be entitled to recover its costs and expenses of such action, including reasonable attorneys' fees. Owner acknowledges that the breach by Owner of any of its obligations under this Agreement cannot be reasonably or adequately compensated in damages in any action at law and that a breach of this Agreement by Owner will cause Company irreparable injury and damage; Owner, therefore, expressly agrees that in the event of a breach or threatened breach of this Agreement, Company will be entitled to injunctive and other equitable relief against Owner. Resort to equitable relief will not in any way be construed as a waiver of any other rights or remedies which Company may have for damages or otherwise.

M. **AUTHORIZATIONS.** Owner represents and warrants that it is the record holder of fee title to the Premises. The person signing on behalf of the Owner represents that he/she is the Owner of the Premises or the authorized agent of Owner, with full authority to bind Owner to the terms and conditions of this Agreement. This Agreement will not be binding upon Company until signed by an authorized representative of Company.

N. **NOTICES.** Any notices pursuant to this Agreement will be validly given or served if in writing delivered personally or sent, postage prepaid, either by U.S. first class mail or telecopy, to the addresses set forth in this Agreement; or to such other addresses as either party may designate to the other in writing. Delivery of any notice will be deemed to be effective: (i) five days after mailing, for first class U.S. mail or (ii) on the telecopy confirmation date, for telecopy or (iii) on the date delivered for personal delivery.

O. **MISCELLANEOUS PROVISIONS.** This Agreement supersedes any and all other access agreements, either oral or written, between the parties hereto, other than any grant of easement entered into by the parties concurrently with this Agreement. This Agreement (and any such grant of easement) contains the entire agreement between Owner and Company and may not be amended except by an agreement in writing signed by the parties. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement will be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

P. **ADDENDA.** The parties may execute certain Addenda, including but not limited to a Pre-Wire Installation Addendum. Upon execution, any such Addenda will become a part of this Agreement.

**EXHIBIT A**

To  
MDU Service Agreement  
dated  
July 26, 2000  
between  
TCI Cablevision of Utah, Inc.  
and  
Sarah Daft Home

**Legal Description**

**EXHIBIT B**

To  
MDU Service Agreement  
dated  
July 26, 2000  
between  
TCI Cablevision of Utah, Inc.

and  
Sarah Daft Home

**The Services**

**Initial Channel Line-Up**

Basic and Expanded Basic

VTDI 16-09-102-007-0000 DIST 05		TOTAL ACRES	0.06
SARAH DAFT HOME	PRINT U	UPDATE	REAL ESTATE 13500
		LEGAL	BUILDINGS 0
	TAX CLASS BE		MOTOR VEHIC 0
737 S 1300 E	EDIT 1	FACTOR BYPASS	TOTAL VALUE 0
SALT LAKE CITY UT	84102379937		
LOC: 737 S 1300 E	EDIT 1	BOOK 0000	PAGE 0000 DATE 00/00/0000
SUB:			TYPE UNKN PLAT
09/19/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY			
E 1 RD OF LOT 2 BLK 8 PLAT F SLC SUR TOGETHER WITH THAT			
PORTION OF VACATED STREET ABUTTING ON S			

PFKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

BK8391PG1709

VTDI 16-09-102-005-0000	DIST 05	TOTAL ACRES	1.97
SARAH DAFT HOME	PRINT U UPDATE	REAL ESTATE	894400
	LEGAL	BUILDINGS	1635400
% RAMONA LINNELL	TAX CLASS BE	MOTOR VEHIC	0
737 S 1300 E	EDIT 1 FACTOR BYPASS	TOTAL VALUE	0
SALT LAKE CITY UT	84102379937		
LOC: 737 S 1300 E	EDIT 1 BOOK 0000	PAGE 0000	DATE 00/00/0000
SUB:		TYPE UNKN	PLAT
09/19/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY			
N 95 FT OF LOT 3 & ALL LOT 4 BLK 8 PLAT F SLC SUR			

PFKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

7729281  
 09/29/2000 02:30 PM 22.00  
 Book - 8391 Pg - 1705-1710  
**NANCY WORKMAN**  
 RECORDER, SALT LAKE COUNTY, UTAH  
 AT&T  
 1165 E WILMINGTON AVE #295  
 SLC UT 84106  
 BY: KCC, DEPUTY - WI 6 P.

BK8391PG1710