

**HAWAII EDUCATIONAL  
NETWORK  
CONSORTIUM  
(HENC)**

**AGREEMENT**

AGREEMENT  
(Educational Access)

This Agreement, entered into on December 24, 1998 but effective as of January 1, 1999, by and between the Hawaii Educational Network Consortium, whose address is at 2532 Correa Road, Honolulu, Hawaii 96822, hereinafter referred to as "HENC", and 'Olelo: The Corporation for Community Television, whose address is at 1122 Mapunapuna Street, Honolulu, Hawaii 96819, hereinafter referred to as "Olelo", with the approval of the State of Hawaii through its Director of Commerce and Consumer Affairs, whose address is at 1010 Richards Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Director";

W I T N E S S E I H:

WHEREAS, pursuant to that certain Agreement between Olelo and the Department of Commerce and Consumer ("DCCA") dated December 24, 1998, Olelo is the designated access entity for the management and operation of PEG access finances, facilities and equipment for the island of Oahu; and

WHEREAS, pursuant to cable franchises issued by the Director, Olelo receives annual PEG access fees from franchised cable operators authorized to provide cable service within the communities they serve; and

WHEREAS, HENC is a consortium comprised of representatives from accredited educational institutions within Hawaii including public and private lower and higher education schools such as the University of Hawaii, Department of Education, and Hawaii Association of Independent Schools, and its primary mission is to coordinate and advance the use of telecommunications technology in Hawaii's education and research communities by facilitating the interconnect and broad access to educational services, e.g., distance education, interpersonal communication services, libraries and information resources located anywhere in the state or elsewhere on public networks; and

WHEREAS, one of HENC's responsibilities is to manage grants awarded to accredited educational institutions for education programs and services, as more particularly described herein; and

WHEREAS, Olelo has agreed to provide PEG access funds to HENC for educational programs and services, and HENC has agreed to be the Education Program Manager with respect to such funds as described in paragraph D hereof; and

WHEREAS, the Director is willing to approve the arrangement between HENC and Olelo regarding the allocation to and use of PEG access resources by HENC for purposes of educational programs and services as set forth herein;

NOW, THEREFORE, the parties hereto mutually agree as follows:

A. Term. The term of this Agreement shall be for the period beginning as of January 1, 1999 and ending December 31, 2002 unless rolled over or terminated earlier as provided in this Agreement.

B. Rolling Term. This Agreement shall be annually extended for an additional year to provide a rolling three-year term after expiration of the first year unless Olelo notifies HENC and DCCA in writing of its decision to not extend the Agreement within 90 days prior to the expiration of the then current year. Notwithstanding the generality of the foregoing, the term of this Agreement at all times shall not be less than three consecutive years unless terminated earlier as provided in this paragraph B and paragraph M hereof.

C. Educational Fund. Olelo shall annually allocate and provide an amount equal to twenty-five percent (25%) of its previous year's audited annual PEG access fees (excluding capital funds) (hereinafter referred to as "Educational Fund") it receives from cable operators, to fund educational programs and services recommended by HENC as described in paragraph E hereof. For purposes of this Agreement, "educational programs and services" shall mean and include instructional programs and services, including but not limited to, life long learning and non-credit courses, produced and/or provided by Hawaii public and private accredited elementary, secondary and higher educational institutions, by way of television broadcast, cablecasting and other types of electronic media such as multimedia design and development, electronic mail, Internet access, and facsimile, as they may relate to such television broadcast or cablecast programming and services.

HENC shall not at any time directly handle or maintain the Educational Fund. HENC shall notify Olelo in writing of its recommendation for specific funding requirements and disbursements to the grant recipients. Within 10 business days after receipt of such notification, Olelo shall make the disbursements directly to each such grant recipient. Except for funding of the Education Program Manager described in paragraph D hereof, the Educational Fund shall not be subject to administrative or overhead costs.

HENC agrees that at all times this Agreement shall be in effect, HENC and its representatives shall not initiate any activity intended to or that will result in HENC or its members receiving additional funding from cable franchise fees not otherwise committed to Hawaii educational institutions or other purposes, outside of the funds provided in this Agreement. HENC further agrees that any official testimony or position from HENC relating to cable franchise fees shall support this Agreement. Notwithstanding the generality of the foregoing, HENC and its members may continue to request interconnections or connections to the State's INET and funds therefor, subject to availability of funds and approval of the Director.

D. Education Program Manager. HENC shall be the Education Program Manager, and shall be compensated as provided herein. As the Education Program Manager, HENC will be responsible for education grants and channel capacity, as set forth in paragraphs E and F below.

Funding for the Education Program Manager shall be paid from the Educational Fund, and Olelo shall allocate and provide such funds in full to HENC on January 1st of each year. For the first year, January 1, 1999 through and including December 31, 1999, no less than \$40,000.00 shall be allocated and provided to HENC. For the second and third years, no less than \$40,000.00 per year shall be specifically allocated from the Educational Fund and provided to HENC, subject to any increase agreed to by the parties hereto. Funding for the Education Program Manager for the fourth and subsequent years shall be by agreement of the parties hereto.

E. Educational Grants. HENC, in its sole discretion, shall recommend, track implementation, and monitor all grants awarded to accredited Hawaii educational institutions. Each grant recommended for approval and award shall be for purposes of developing and delivering educational programs and services. HENC will enter into an agreement with each grant recipient setting forth the terms and conditions regarding use of the funds, reporting requirements, and other matters deemed necessary and appropriate by HENC for purposes of accountability. HENC shall set up procedures and guidelines for application review, recommending award, monitoring of grants, establishing accounting, and other operational procedures for grant management and monitoring activities, and all other matters deemed necessary and appropriate by HENC. HENC shall complete all such procedures and guidelines within 60 days from the effective date of this Agreement. It is understood that the recipient agreements are not intended to limit HENC or any of its members from collaborating or partnering with other educational, public or private agencies or organizations. All grant recommendations will be approved by one central authority within HENC.

F. Channel Capacity. HENC shall also make recommendations to Olelo regarding the amount of channel capacity, up to the equivalent of 24 hours per channel for two channels, to be scheduled by the educational institutions represented by HENC. The recommendations shall be based upon the programming needs of the educational institutions, and shall be made to Olelo at least two months prior to the start of each semester, e.g., January, May and August. Olelo agrees that it shall provide the recommended capacity on the two channels designated for educational programming.

HENC shall also establish procedures and guidelines for resolving, in a timely and equitable manner, any scheduling conflicts between educational institutions. The procedures and guidelines, and any modifications thereto, shall be provided to Olelo within 60 days from the effective date of this Agreement.

G. HENC's Reporting Requirements. HENC shall submit a semi-annual and an annual report to Olelo and the Director in the form as shown in Exhibit 1 attached hereto and made a part hereof, together with a written narrative describing the grants awarded by HENC. The semi-annual report shall be due on July 15th of each year covering the first six months of that year, and the annual report shall be due on January 31st of each year covering the second six months of that year. The annual report shall also include information on the benchmarks described in said Exhibit 1, benchmarks identified for specific projects, a year end summary of each grant awarded, HENC's anticipated or planned activities, funding requirements, and other matters as deemed appropriate by HENC for the next year or years. HENC and Olelo shall meet within one month following each semi-annual and annual report, to review the report and discuss and resolve any issues, concerns or conflicts with respect to the matters covered by this Agreement. HENC shall be responsible for reviewing, modifying, and updating the education benchmarks described in said Exhibit 1.

H. Annual Review of Agreement. It is understood that Olelo shall in good faith annually review its commitment to provide the Educational Fund beyond the year 2002 as described in paragraph B hereof.

I. Assignment. HENC shall not assign any of its rights under this Agreement nor delegate any of its duties, obligations, or responsibilities required to be performed under this Agreement without the prior written consent of Olelo.

J. Modification of Agreement. Any modification, alteration, or amendment of any term, provision, or condition of this Agreement shall be in writing and signed by the parties hereto, together with the written approval of the Director.

K. Indemnification. HENC and its members, to the extent provided by law and subject to Legislative appropriation, shall defend, indemnify and save harmless Olelo and its officers, directors, employees and agents, and Olelo shall defend, indemnify and save harmless the University of Hawaii, Department of Education, East West Center, Hawaii Association of Independent Schools and their respective officers, directors, employees and agents, from and against any and all claims, actions, losses, expenses, damages, or liability to person or property arising out of or resulting from any provision or requirement of this Agreement, or in exercising their respective rights or in performing their respective obligations under this Agreement.

HENC and its members, to the extent provided by law and subject to Legislative appropriation, and Olelo shall each defend, indemnify and save harmless the State of Hawaii, its departments, officers, employees, and agents from and against any and all claims, actions, losses, expenses, damages, or liability to person or property arising out of or resulting from any provision or requirement of this Agreement, or in exercising their rights or in performing their obligations under this Agreement.

The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

L. Default. In the event any party fails to satisfactorily perform in a timely or proper manner any of its obligations or responsibilities or fails to observe or perform any term or condition required to be performed or observed by any such party under this Agreement, and having been given notice of and reasonable opportunity to cure the same, fails to take satisfactory corrective action within the time specified, the non-defaulting party, in addition to all other available rights and remedies, shall have the right to terminate this Agreement and bring an action in law or equity against the defaulting party.

M. Termination. In the event any one or more of the cable operators' cable franchises covering the island of Oahu is terminated, the PEG access fee paid by such operator or operators to Olelo is terminated for any reason, or the Agreement between Olelo and DCCA dated December 24, 1998 is terminated for any reason, this Agreement shall be automatically terminated concurrently therewith.

N. Performance. The failure of a party at any time to require performance of any obligation or condition under this Agreement shall not affect the right of such party to enforce the same. The waiver by a party of any breach of any term or condition of this Agreement shall not be deemed or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

O. Entire Agreement. This Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings or agreements, oral or written, pertaining to the subject matter contained herein.

P. Invalidity of Provision. If any provision of this Agreement as applied to any party or any circumstance is deemed void or unenforceable for any reason by a court of competent jurisdiction over the subject matter, the same shall in no way affect (to the maximum extent permitted by law) any other provision of this Agreement, the application of such provision to any party or under any other circumstances, or the validity or enforceability of this Agreement as a whole.

Q. Relationship of Parties. The parties intend that an independent contractor relationship will be created by this Agreement, and the parties agree that the Education Program Manager shall not be treated as an employee for federal or State of Hawaii employment tax or other similar purposes. HENC recognizes and agrees that HENC, as the Education Program Manager, is not an employee of Olelo and is not entitled to benefits from Olelo under any employment security law, worker's compensation law, minimum wage law, TDI insurance, prepaid health insurance laws or laws governing pension plans. Olelo is interested only in the results to be achieved through the efforts of HENC, and HENC shall have the sole control of the manner and means of performance of its duties and obligations set forth in this Agreement, and shall complete its duties according to its own methods of work.

R. Expenses. HENC and Olelo shall each bear their respective expenses relating to their compliance with the various provisions of this Agreement, and HENC and Olelo agree to pay all of their own expenses (including all legal and accounting fees and costs) incurred in connection with this Agreement and the transactions contemplated thereby.

S. Authority. Olelo represents and warrants to HENC that the individual executing this Agreement on behalf of Olelo has the requisite legal and actual authority to so execute this Agreement and to bind Olelo to the terms and conditions of this Agreement. HENC represents and warrants to Olelo that the individuals executing this Agreement on behalf of HENC has the requisite legal and actual authority to so execute this Agreement and to the extent not otherwise provided by law bind HENC to the terms and conditions of this Agreement.


T. Compliance with Laws. The parties hereto shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time.

U. Filings and Notices. All filings required to be made or written notice required to be given by a party shall be delivered personally or sent by United States first class mail, postage prepaid, to the other party or parties at such party's or parties' mailing address.

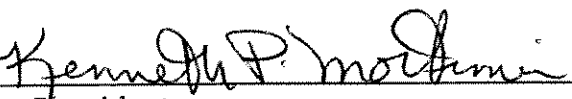
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HAWAII EDUCATIONAL NETWORK CONSORTIUM (HENC)

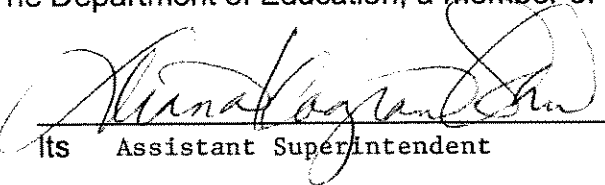
By The East-West Center, a member of HENC

  
\_\_\_\_\_  
Its Vice President for Administration 12/10/1998  
(Acting President)

By The University of Hawaii, a member of HENC

  
\_\_\_\_\_  
Its President

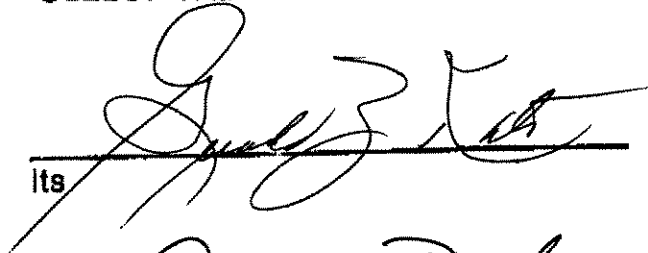
By The Department of Education, a member of HENC

  
\_\_\_\_\_  
Its Assistant Superintendent

By The Hawaii Association of Independent Schools, a member of HENC

  
\_\_\_\_\_  
Its Executive Director

'OLELO: THE CORPORATION FOR COMMUNITY TELEVISION

  
its

  
Its

APPROVED:

  
KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer Affairs