

Updated March 1, 2018

# Section XI – HICAP Services



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## **A. Introduction**

This Section sets forth the specific Rules, Regulations and Rates Applicable to the FPB High Capacity Service (HICAP). This includes the specific Terms and Conditions, which the Subscriber/Customer will abide by, based on the Subscriber signing the Master Application Service Agreement.

## **B. General Description of HICAP Services (To Be Developed)**

## **C. Specific Terms and Conditions**

### Liabilities of the Plant Board

- a. The Plant Board's liability for damages arising out of mistakes, interruptions, omissions, delays, errors, or defects in transmission which occur in the course of furnishing service or facilities, in no event shall exceed an amount equivalent to the proportionate charge to the Customer for the period during which the faults in transmission occur.
- b. The Plant Board shall not be liable for claim or loss, expense or Damage (including indirect, special or consequential damage), for any interruption, delay, error, omission, or defect in any service, facility, or transmission provided under this tariff, if caused by any person or entity other than the Plant Board, by any malfunction of any service or facility provided by any other carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Plant Board's direct control.
- c. The Plant Board shall not be liable for claim or loss, expense or Damage (including indirect, special or consequential damage), for any interruption, delay, error, omission, or defect in any service, facility, or transmission provided under this tariff, if caused by any person or entity other than the Plant Board, by any malfunction of any service or facility provided by any other carrier, by an act of God, fire, war, civil disturbance, or act of government, or by any other cause beyond the Plant Board's direct control.
- d. The Plant Board shall not be liable for, and shall be fully indemnified and held harmless by Customer against any claim of loss, expense, or damage (including indirect, special or consequential damage) for defamation, libel, slander, invasion, infringement of copy-right or patent, unauthorized use of any trademark, trade name, or service mark, unfair competition, interference with or misappropriation or violation of any contract, proprietary or creative right, or

any other injury to any person, property or entity arising out of the material, data, information, or other content revealed to, transmitted, or used by the Plant Board under this tariff; or for any act or omission of the Customer; or for any personal injury or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use or removal of equipment or wiring provided by the Plant Board, if not directly caused by negligence of the Plant Board.

- e. No agent or employee of any other carrier shall be deemed to be an agent or employee of the Plant Board.
- f. The Plant Board shall not be liable for any defacement of or damage to the premises of a Customer resulting from furnishing of service which is not the direct result of Plant Board's negligence.
- g. Other Terms & Conditions are being developed.

#### **D. Maximum HICAP Service Rates and Charges**

	<b>Rates for HICAP Service</b>	<b>Maximum Rate</b>
<b>A</b>	Monthly Rate for Dedicated Access (Transport Only) to Internet DS-1 Service (1 Year Minimum Service Period)	Per Contract
<b>B</b>	Monthly Rate for Dedicate Access to Long Distance Carrier – DS01 Service (2 Year Minimum Service Period)	\$100.00
<b>C</b>	Monthly Coordination Fee associated with Access to Long Distance Carrier if billable by FPB	\$90.00
<b>D</b>	Monthly Rate for Dedicated Point-To-Point Private Circuit – DS-1 Service (2 Year Minimum Service Period)	\$200.00
<b>E</b>	Non-Reoccurring Charge for Installation to End User Premise DS-1 Service	\$250.00
<b>F</b>	Pass-Thru-Cost of Alternate Access Vendors will be added, where applicable	Pass Thru Cost

<b>G</b>	<b>Monthly Rate for Local Loop – DS-3 Service</b>	
	1 Year Minimum Service Period	\$14,000.00
	2 Year Minimum Service Period	\$13,000.00
	3 Year Minimum Service Period	\$12,000.00
<b>H</b>	Installation / Non-Reoccurring Charge or DS-3 Service	Estimated Cost (Contract)
<b>I</b>	Monthly Rate for Local Loop having Multiple DS-3 Service	
	Two DS-3 Service	
	1 Year Minimum Service	\$24,000.00
	2 Year Minimum Service	\$23,000.00
	3 Year Minimum Service	\$20,000.00
	Three DS-3 Service	
	1 Year Minimum	\$34,500.00
	2 Year Minimum	\$31,500.00
	3 Year Minimum	\$27,000.00
	Four DS-3 Service	
	1 Year Minimum	\$45,000.00
	2 Year Minimum	\$41,000.00
	3 Year Minimum	\$37,000.00

<b>J</b>	Installation / Non-Reoccurring Charges for Multiple DS-3 Service	Estimated Cost (Contract)
<b>K</b>	Monthly Rate for Dedicated Point-to-Point 10mbs Ethernet Connection (1 Year required minimum service period)	\$2,000.00
<b>L</b>	HICAP (2 Meg or >) Ethernet/Internet Service (New Service)	
	First 2 Meg	Monthly Charge
	1 Year Term	\$1,000.00
	2 Year Term	\$800.00
	3 Year Term	\$700.00
	Each Additional 2 Meg	\$450.00
	Monthly Charges having same term as (1)	
	Installation – Non-Reoccurring Charge	\$100.00
	Upgrades – Non-Reoccurring Charge	\$50.00
	IP Address (any charges FPB is assessed for more than one IP Address will be passed on to the customer)	
<b>M</b>	Management has the discretion to discount rates based on Service promotion, packaging or changing market conditions.	

**Ethernet/Internet Service Agreement**

This Ethernet/Internet Service Agreement ("Agreement") is made on this date \_\_\_\_\_, by and between the Electric and Water Plant of the City of Frankfort, Kentucky, (hereinafter referred to as "FPB") P.O. Box 308, Frankfort, Kentucky 40601 and \_\_\_\_\_ ("Customer") whose business address is \_\_\_\_\_, Frankfort, Kentucky.

Whereas, FPB can provide the facilities and services for a 2 MBS or greater burstable bandwidth Ethernet/Internet Service delivered via fiber optic cable and 10/100 Ethernet cable, terminating on customer's premise router, having one Static Internet protocol (IP) address and six e-mail accounts; and

Whereas, the customer has a need for such service,

both parties hereby mutually agree to the following terms and conditions for the service:

**TERM:**

This Agreement shall be for \_\_\_\_\_ year(s). The service period and billings shall commence on the first day following the date that the installation of service is completed at the end of the term. The Agreement will automatically renew on a month-to-month basis until such time that 30 days advance notice is given by either party to terminate the Agreement.

**FEES:**

The applicable rates and service options and periods selected by the customer are shown on Exhibit A of this Agreement. These rates are subject to change by FPB's Board of Directors; however, FPB will give the Customer thirty (30) days notice of any rate changes and Customer may accept the changes or terminate in accordance with this Agreement.

**INVOICING AND PAYMENT:**

Customer Billing and payment due dates will be consistent with the Plant Board's regular Billing Policy applicable to cable/telecommunications services as set forth in Section II (General Provisions) of FPB Rules, Regulations and Rates. All charges are payable at the beginning of the month in which service is rendered. All installation charges for the service(s) included in the agreement will be invoiced along with the first month's Ethernet/Internet services.

When a service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which services were furnished will be calculated on a pro-rated basis with every month considered to have 30 days.

If Customer fails to pay any amounts owed to FPB by the 15th of the month or some other billing cycle mutually agreed to by the parties, FPB may discontinue or suspend service without incurring any liability to Customer, under Section II of FPB's Rules, Regulations, and Rates.

#### FPB RESPONSIBILITIES:

A) FPB shall use reasonable efforts to complete the installation of the service(s) on or before the date specified in Exhibit A, subject to the completion of the Customer's responsibilities set out in the Customer Responsibility Section (a) through (g) below.

B) It is the responsibility of FPB to gain access to the Customer's premise with fiber optic cable, however if underground access to the Customer's building is desired, the Customer is responsible for installing the underground conduit to a point to be determined by FPB engineers.

C) While Customer is responsible for ensuring that Customer-provided equipment is compatible with FPB equipment and facilities, FPB will provide Customer with any required information and reasonable technical assistance to facilitate such compatibility. The responsibility of FPB shall be limited to the furnishing, operation and maintenance of facilities and equipment furnished by FPB for the service(s) outlined in this Agreement. It is understood that FPB may provide assistance beyond FPB owned facilities as a matter of Customer service, but that FPB is not required to do so and assumes no responsibility for such other facilities or equipment.

#### CUSTOMER RESPONSIBILITIES:

The Customer shall provide to FPB and maintain at Customer's cost:

- a) Pathway and electronics needed to terminate services on customer's router.
- b) All internal building conduits necessary for FPB to install its wiring from the building service entrance to the point of termination/router;
- c) Suitable space (i.e., a room, or a portion thereof if acceptable to FPB), for FPB facilities and equipment required by this Agreement;
- d) Sufficient electric power to operate the FPB facilities and equipment specified in the Agreement. The Customer is responsible for any battery backup of equipment installed on the Customer's premise;



e) Access to (a) and (b) above for installation, maintenance, operation, and removal of the services(s);

f) Proper operating environment for all FPB facilities and equipment located on the Customer's premises.

g) The Customer will not, nor will Customer permit others, to rearrange, disconnect, remove, and attempt to repair, or otherwise interfere with any of the facilities or equipment installed by FPB, except upon FPB prior written consent. It is to be understood that ALL equipment installed by FPB is the property of FPB and is to be returned upon termination of service. Any IP Addresses secured and assigned by

FPB remains the property of FPB upon termination of the service. FPB shall not be responsible for the installation, testing, operation, maintenance, or repair and replacement of any Customer provided equipment required for the Customer's interconnection with or use of the service(s) described in Exhibit A.

#### DATA RATE:

If the Customer's data rate consistently exceeds 512 Kilobits per second (kps) per 2 MBS service contracted for, then an upgrade of 2 MBS will be required to continue service. Such an upgrade will require an amendment to this contract. Otherwise, FPB has the right to limit the data rate so it does not consistently exceed 512 kps per 2 MBS.

#### SERVICE INTERRUPTIONS AND CREDITS:

FPB shall use reasonable efforts to maintain the facilities and Equipment that it furnishes to the Customer. FPB shall respond within two hours to the Customer's Location and restore any outage of the service(s) included in the Agreement as soon as practicable after FPB receives notice of the outage from Customer. A service is interrupted when it becomes unusable by the Customer because of a failure of FPB telecommunication facilities or equipment. An interruption begins when an inoperable service is reported to FPB and ends when the service is operable.

Access to FPB equipment on Customer's property may be required to restore service and Customer shall receive no interruption credit on charges for service for any delay occasioned by such lack of access. Service interruption because of failure of customer's facilities or equipment, and not the failure of FPB telecommunication facilities or equipment shall not be the responsibility of FPB. Any repair services performed by FPB in connection with Customer's facilities or equipment, when performed at Customer's specific request shall be billed to and paid for by Customer on the next regular billing cycle. Except as otherwise provided herein, Customer shall be entitled to a pro rata credit for any interruption in service exceeding two (2) hours, if such interruption is not due to the act or omission of the Customer or the failure of equipment of Customer or equipment of others. In case of emergencies call (502)352-4300 Twenty-Four (24) hours per day.

**CONTRACT CHANGES:**

Any changes to this Agreement must be set forth in writing and mutually agreed to by both parties as an Amendment.

**NOTICE:**

Notices required to be given under this Agreement shall be given in writing, hand delivered or mailed, postage prepaid, or sent by facsimile transmission addressed to the appropriate party at the address set forth below. Either party may change the name and address at any time by giving written notice to the other party.

**FPB Marketer**

**Customer:**

Frankfort Plant Board  
P.O. Box 308  
Frankfort, KY 40602  
(502) 352-4372  
Fax:(502)-223-3887

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TERMINATION:**

If Customer cancels or terminates a service prior to the completed installation of the service, but after the execution of the Agreement, Customer shall pay all reasonable costs incurred by FPB in the implementation of the service. Bandwidth Backbone and Construction costs (both considered termination charges) are financed through the term of the contract and in the event the Customer cancels the service after the contract is executed or prior to the end of the term, the Customer will be responsible for full payment of any and all remaining costs associated by FPB with the Backbone Bandwidth and Construction of the Fiber Connection for the remaining portion of this Agreement.

If FPB raises the rates for the service during the contract terms, which are not acceptable to the Customer, the Customer may terminate the contract within 30 days prior to written notice without penalty.

If Customer should breach any material provision of this Agreement and fail to cure said breach within 10 days after receipt of notice of default for such breach, then FPB, at its option, may terminate this Agreement. Such termination shall be treated as if it were a cancellation by Customer for the purpose of determining any amounts due to FPB from Customer as "termination charges".

**ASSIGNMENT OF OWNERSHIP:**

Customer may not assign or otherwise transfer this Agreement without the prior written consent of FPB. Subject to the foregoing, this Agreement shall be fully binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors

and assigns. Customer shall not resell, sublet or provide to others any of the services provided by FPB under this Agreement in whole or in part.

#### FORCE MAJEURE:

Neither party is liable for failure to carry out any of its obligations under this Agreement caused by Force Majeure. A party rendered unable to fulfill any obligation under this Agreement by Force Majeure must make reasonable efforts to remove the inability in the shortest possible time. The other party will be excused from performing its obligations until party relying on the Force Majeure is again in full compliance with its obligations under the Agreement.

“Force Majeure” means any cause beyond the control of the party affected, and which the party affected is unable to overcome by reasonable efforts, including without limitations the following: acts of God, fire, flood, landslide, earthquake, hurricane, tornado, storm, freeze, volcanic eruption or drought; blight, famine, epidemic or quarantine; theft; casualty; war; invasion; civil disturbance; explosion; acts of public enemies or sabotage. Labor-related performance impediments such as labor strikes, disturbances, or shortages are not Force Majeure.

#### INDEMNIFICATION:

Customer agrees that it will not use the services or facilities provided by FPB for any unlawful or illegal purpose and agrees to indemnify and hold FPB harmless from any loss or damage arising from such use.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, FPB MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, RELATING TO FPB SERVICES AND FACILITIES AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE REMEDIES SET FORTH HEREIN SHALL BE FPB’S SOLE OBLIGATIONS AND CUSTOMER’S SOLE REMEDIES FOR ANY LOSS OR DAMAGE SUSTAINED AS A

RESULT OF ANY INTERRUPTION OF THE SERVICES OR ANY FACILITIES USED IN PROVIDING THE SERVICES, HOWEVER LONG IT SHALL LAST AND REGARDLESS OF THE CAUSE, UNLESS SUCH LOSS OR DAMAGE IS DUE TO FPB WILLFUL ACTS OR OMISSIONS.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES RELATING TO OR ARISING FROM THE PROVISION OF THE SERVICES TO BE PROVIDED HEREUNDER, OR OTHERWISE RELATING TO THE PERFORMANCE BY EITHER PARTY OF ITS OBLIGATIONS HEREUNDER,

INCLUDING, WITHOUT LIMITATION, DAMAGES BASED ON LOSS OF REVENUES, PROFITS OR BUSINESS OPPORTUNITIES, WHETHER OR NOT FPB OR CUSTOMER HAS OR SHOULD HAVE HAD ANY KNOWLEDGE, ACTUAL OR CONSTRUCTIVE, THAT SUCH DAMAGES MIGHT BE INCURRED; PROVIDED, HOWEVER, THAT THE FOREGOING IS NOT INTENDED TO LIMIT ANY REMEDIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT

Customer agrees to indemnify and hold FPB harmless for any loss or expense, including attorney fees, arising from damage to FPB equipment or injury to persons related to the services and facilities provided under this Agreement, except any loss, damage, or expense arising directly from the WILLFUL act or omission of FPB.

**FORUM:**

This Agreement is governed by the law of the State of Kentucky and the parties agree that the Franklin Circuit Court shall have jurisdiction and venue in the event litigation is brought concerning this Agreement.

**MISCELLANEOUS:**

Customer agrees to pay all taxes, fees, or impositions which may be levied by any authority on the service and facilities which may be provided hereunder, including taxes, fees, or impositions which may be imposed after the date of this Agreement and any taxes which may be imposed on FPB (such as gross receipts taxes), and further agrees that FPB may include such or amounts equivalent to such in its billings to Customer for services.

**Exhibit A:**

Sets forth the Rates and Terms of the services selected by the customer under this Agreement and the requested service activation date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

Customer

The Electric and Water Plant Board of the City of Frankfort Kentucky

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit “A” To



## Ethernet/Internet Service Agreement

Service Rate

Plan Selected

By Customer	Services & Term	Charges
First 2 MBS	1 Year Term	\$1,000 – Per Month
	2 Year Term	\$800 – Per Month
	3 Year Term	\$700 – Per Month
	Each Additional 2 MBS	\$450 – Per Month
No. of Additional 2 MBS		
	Installation (Non-Reoccurring)	\$100
	Upgrades (Non-Reoccurring)	\$50
	IP Address	Any charges FPB is assessed for more than one IP Address will be passed on to the customer

Requested Service Activation Date: \_\_\_\_\_

Customer Signature \_\_\_\_\_

Date \_\_\_\_\_