

Updated March 1, 2018

Section VI – Point to Point



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A. Introduction

Dark Fiber Connectivity shall be defined as private point-to-point connectivity between two or more locations for one end-user customer. The customer is responsible for the electronic equipment that will communicate over the dark fibers. Any communications over these fiber links must originate and terminate at locations owned or implicitly controlled by the end-user customer to which the dark fiber connection is being provided and shown in Exhibit A of the Point-to-Point Dark Fiber Connectivity (PTPDFC) Service Agreement executed when the customer requests service. No electronic communications over these fiber links may be connected, retransmitted, or in any way further distributed to any other location without the express written consent of FPB. Point-to-Point Dark Fiber links will be provided monthly via two (2) fibers, either single-mode or multi-mode. The fibers will normally terminate in a fiber termination panel provided by FPB and located 100' or less from the entry point inside the customer's facilities at each location. Any variations in the number of fiber or demarcation points will be shown in Exhibit A of the PTPDFC Service Agreement.

B. Term

The term of service is shown on Exhibit A of the PTPDFC Service Agreement. The service period and billings shall commence on the first day following the date that the installation of service is completed and terminate 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.

C. Rates and Charges

A monthly service fee, plus a non-recurring installation charge apply to all point-to-point connections as shown on Exhibit A. The monthly service fee is based on the actual length of the fiber route and is calculated at \$500 for the first mile (or fraction thereof), plus \$100 for each additional mile (in one-tenth mile increments). The installation charge will be based on the term of service selected:

Three (3) Year Agreement 25% of applicable installation/construction costs.

Two (2) Year Agreement 50% of applicable installation/construction costs.

Month-to-Month Agreement 100% of applicable installation/Construction costs.

The rates and charges 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.

D. Special Construction Surcharge (Non-Refundable)

If the Plant Board does not currently have available Cable TV support strand or underground structure installed along the desired route, customer may be charged a monthly service fee which will be calculated as follows:

Plant Board's actual materials and labor cost (including pole make ready cost incurred) for installation of the support strand or underground structure plus 15% (for overhead and maintenance) divided by number of months in the Term of Service. The special construction surcharge will be applicable each month through the end of the Service Agreement, at which time it ceases. The special construction surcharge is not refundable. The Plant Board has complete discretion to decide whether a special construction surcharge is applicable or the installation of the support strand or underground structure is mechanically feasible.

E. FPB Responsibilities

1. FPB shall use reasonable efforts to complete the installation of the service(s) on or before the date specified in Exhibit A of the PTPDFC Service Agreement, subject to the completion of the Customer's responsibilities set out in the Customer Responsibility Section below. However, FPB does not guarantee or warrant that service will be operational by a certain date.
2. FPB typically provides aerial, fiber optic cable to the building entrance. However, if underground access to the Customer's building is desired, the Customer is responsible for installing the underground conduit to a point determined by FPB engineers.
3. While the 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 the PTPDFC Service 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.

F. Customer Responsibilities

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

1. Demarcation Point: The dark fiber demarcation point (the end of the Plant Board's responsibility) will be a fiber termination panel, provided by FPB and permanently installed at a point not to exceed 100 feet from entry into the customer's building.
2. The customer will be responsible for the installation of building entrance facilities (eyebolt, weatherhead, etc) and conduit, to FPB's specifications, between the building entrance and the fiber termination panel. Customers desiring multiple building entries or demarcation points that exceed the 100-foot distance limit will be addressed on an individual case basis and settled by a one-time, non-refundable charge based on cost plus 15 percent.
3. Suitable space (i.e., a room, or a portion thereof if acceptable to FPB), for FPB facilities and equipment required by the PTPDFC Service Agreement;
4. Sufficient electric power to operate the FPB facilities and equipment specified in the PTPDFC Service Agreement. The Customer is responsible for any battery backup of equipment installed on the Customer's premises;
5. Access to (a) and (b) above for installation, maintenance, operation, and removal of the services(s);
6. Proper operating environment for all FPB facilities and equipment located on the Customer's premises.
7. The Customer will not, nor will Customer permit others, to rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by FPB, except upon FPB's prior written consent. ALL equipment installed by FPB including the termination panel is the property of FPB and is to be returned upon termination of service.
8. 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 of the PTPDFC Service Agreement.

G. Contractual Pricing/Bulk Rates

The Frankfort Plant Board reserves the right to provide contractual package pricing based on volume, term of contract, etc.

H. Invoicing and Payment

Customer billing and payment due dates will be consistent with FPB'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 after which service is rendered. All non-recurring installation charges for the service(s) will be invoiced along with the first month's PTPDFC 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.

I. 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 (2) hours to the Customer's location and restore any outage of the service(s) included in the PTPDFC Service 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) 352-4372 twenty-four (24) hours per day.

J. Fees and Taxes

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 pursuant to the PTPDFC Service Agreement, including taxes, fees, or impositions. Which may be imposed after the date of the PTPDFC Service 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.

K. Contract Changes

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

L. Notice

Notices required to be given under the PTPDFC Service 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	Customer
Shane Holt	
Frankfort Plant Board	
PO BOX 308	
Frankfort, KY 40602	
Phone: 502-352-4372	
Fax: 502-223-4449	

M. Termination

In the event that the Customer terminates the service after the PTPDFC Service Agreement is executed; but prior to the end of the term, the Customer will be responsible for full payment of any and all remaining monthly fees for the full term of the PTPDFC Service Agreement.

If FPB raises the rates for the service during the PTPDFC Service Agreement's term, and such rates are not acceptable to the Customer, the Customer may

terminate the PTPDFC Service Agreement with 30 days prior written notice without penalty.

If customer should breach any material provision of the PTPDFC Service 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 the PTPDFC Service Agreement. Such termination shall be treated as if it were a cancellation by customer and customer shall be responsible for full payment of any and all remaining monthly fees for the full term of the Agreement. Likewise, if FPB should breach any material provision of the PTPDFC Service Agreement and fail to cure said breach in accordance with the provisions outlined under service interruptions and credits, the customer may terminate the PTPDFC Service Agreement and not be responsible for remaining monthly fees.

N. Assignment of Ownership

Customer may not assign or otherwise transfer the PTPDFC Service Agreement without the prior written consent of FPB. Subject to the foregoing, the PTPDFC Service 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 the PTPDFC Service Agreement in whole or in part.

O. Force Majeure

Neither party is liable for failure to carry out any of its obligations under the PTPDFC Service Agreement caused by Force Majeure. A party rendered unable to fulfill any obligation under the PTPDFC Service 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 PTPDFC Service 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.

P. 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.

Q. Warranties

Except as expressly provided in the PTPDFC Service 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.

R. Remedies

Except as otherwise expressly provided for in the PTPDFC Service Agreement, the remedies set forth in the PTPDFC Service Agreement shall be FPB's 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 or customer's 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 pursuant to the PTPDFC Service Agreement or otherwise relating to the performance by either party of its obligations pursuant to the PTPDFC Service Agreement, 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 the PTPDFC Service Agreement. Customer agrees to defend, indemnify and hold FPB harmless against all actions 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 the PTPDFC Service Agreement, or any action which may occur or arise against FPB in the normal course and discharge of its duties under the PTPDFC Service Agreement, except any loss, damage, or expense arising directly from the willful act or omission of FPB.

S. 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 the PTPDFC Service Agreement.

Exhibit A

Sets forth the description of Service, Rates and 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	Frankfort Plant Board
By:	By:
Title:	Title:

Point-To-Point Dark Fiber Connectivity (PTPDFC) Service Agreement

This Point-to-Point Dark Fiber Connectivity (PTPDFC) Service Agreement ("Agreement") is made on this date _____, by and between the Electric and Water Plant Board of the City of Frankfort, Kentucky (hereinafter referred to as "FPB"), PO Box 308, Frankfort, KY 40602 and _____ ("Customer"), whose business address is _____, Frankfort, KY.

Whereas, FPB can provide and maintain the PTPDFC Service; and

Whereas, the customer has a need for such service;

Therefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged, both parties hereby mutually agree to the following terms and conditions for the service:

Exhibit A:

Point - to - Point Dark Fiber Connectivity Service Agreement

Link #: _____ - Single Mode or – Multimode

Point A:

Address
Entity or Organization

Point B:

Address
Entity or Organization

This Exhibit describes the monthly Service Fee and applicable Non-refundable Installation Charge(s) based on the Term of Service selected for the provisioning of a two (2) fiber, point-to-point connection between the end-users locations identified above. The monthly Service Fee is based on actual length of the fiber route selected by FPB, not straight-line distance and is calculated at \$500 for the first mile (or fraction thereof) plus \$100 for each additional mile (in one-tenth mile increments). Additional charges associated with the demarcation location(s) are calculated at cost plus 15%.

Monthly Service Fee Pre-construction” Estimate: _____ # of miles = _____ # of months.

A. Installation & Service Plan

Term	Non - Refundable	Installation Charge
Select One	Estimated	Actual
3 Years – 25% of Installation Cost		
2 Years – 50% of Installation Cost		
Month-to-Month 100% of Install Cost		

B. Other Charges

	Estimated	Actual
Demarc > 100 feet from entry, add. demarc points, etc.	\$ _____	\$ _____
Total non-refundable installation charge (A + B)		

C. Monthly Service Fee – based on actual route length of _____ miles = \$ _____

Requested Activation Date		Actual Activation Date	
Customer		Frankfort Plant Board	
Name (Print)		Name (Print)	
Title		Title	
Signature		Signature	
Date		Date	