

ROCHELLE MUNICIPAL  
UTILITIES DARK FIBER LICENSE  
AGREEMENT

This Dark Fiber License Agreement ("Agreement") is made as of this \_\_\_\_\_ day of February, 2020 ("Effective Date") by and between the City of Rochelle, acting through the Rochelle Municipal Utilities ("Licensor" or "RMU"), and Digital Network Access Communications, Inc. ("Licensee") for the purpose of establishing the terms and conditions under which Licensor will license the use of certain Dark Fibers (referred to herein as the "Licensed Fibers") to Licensee.

**RECITALS**

- A. Licensor owns and operates a fiber optic network (the "RMU Network"), on which it licenses the use of excess Dark Fiber to third parties from time to time. As used in this Agreement, "Dark Fiber" means a solid core of optical transmission material without the equipment necessary to transmit signal communications.
- B. Licensee seeks to use the Dark Fiber strands set forth on Exhibit A which are owned by Licensor, pursuant to the terms of this Agreement.
- C. Licensor is willing to grant Licensee the use of such Dark Fiber along the routes described in Exhibit A in exchange for certain payments to Licensor by Licensee and pursuant to the terms of this Agreement.

Licensor and Licensee hereby agree as follows:

1. **License Granted.**

- a. Subject to the terms of this Agreement, Licensor hereby grants Licensee a revocable and exclusive license authorizing Licensee to use the Dark Fiber strands as set forth on Exhibit A (the "Licensed Fibers"), which will be installed between the routes as shown on Exhibit A-1. The parties shall mutually agree upon a specific location for the fiber termination point which will be **outside** of the Rochelle Municipal Utilities Technology Center (the "Technology Center"), located at 910 Technology Parkway, Rochelle, Illinois. Licensee's right to use the Licensed Fibers shall, at all times, be subordinate to Licensor's obligation to provide a safe and reliable supply of electricity to its customers.
- b. Nothing in this Agreement shall be deemed to grant, convey, create, or vest an interest or estate in land or specific personal property in Licensee, including any fee, leasehold interest, easement, or any franchise rights.
- c. Nothing contained in this Agreement shall be construed as affecting in any way Licensor's unilateral rights over the Licensed Fibers and the RMU Network.

2. **Services.**

- a. Licensor shall have the exclusive right to install, operate, and maintain the Licensed Fibers. The installation of the Licensed Fibers shall be completed in accordance with the National Electric Safety Code and all other applicable safety codes and rules.
- b. Licensor shall provide Licensee a fiber optic termination point **outside** the Technology Center. Licensor shall provide any necessary fiber termination racks and conduit. The fiber termination rack shall be considered the demarcation point between Licensor's and Licensee's equipment. Licensor shall be responsible for the operation and ordinary maintenance and repair of the Licensed Fibers. For purposes of this Agreement, "ordinary maintenance and repair" shall mean semi-annual or annual visual inspection of the Licensed Fibers and any related pole transfers.
- c. In the discharging by Licensor of its rights and obligations regarding the Licensed Fibers, Licensee expressly acknowledges that Licensor will give primary consideration to those actions or inactions which it judges necessary or desirable for the proper, safe, and efficient operation of its electric distribution system.

3. **Installation and Access.** Licensor will make the Licensed Fibers available to Licensee no later than March 1, 2020. Licensee acknowledges that it must install any electronic and optronic equipment or other facilities necessary to utilize the Licensed Fibers and that service cannot commence until such Licensee equipment and facilities have been installed and are functioning.

4. **RMU Network Outages.**

- a. **Emergency Numbers.** Licensor will provide Licensee with a current list of emergency telephone numbers that can be reached seven (7) days per week, twenty-four (24) hours per day for emergency restoration of service outages.
- b. **Restoration of Service.** In the event of a storm or accident or other like event that causes damage to the RMU Network and Licensor's electric power distribution system, Licensor shall have the right to restore electric service to its customers before undertaking repairs to the RMU Network, as Licensor deems necessary in its sole discretion. At such time as Licensor undertakes repair of the RMU Network, any active fibers will be restored to service on a priority basis.
- c. **Restoration of Active Fibers.** Except as provided in Paragraph 4(b), Licensor shall restore service to any damaged active Licensed Fibers as soon as reasonably practicable once Licensor has actual knowledge of such outage and shall notify Licensee within one (1) hour of service restoration. Licensee shall supply Licensor with the name and telephone contact number for purpose of this notification.

- d. **Refund.** Licensee will be entitled to a prorated refund of the License Fee for the period of time that each Licensed Fiber is out of service as a result of damage to the RMU Network beginning twenty-four (24) hours after Licensor has actual knowledge of such outage, until the time that such Licensed Fiber is restored to service. For example, if all of the Licensed Fibers were out of service for forty-eight (48) hours, then the refund would be 1/365th of the annual license fee then in effect. In no event shall the amount of the refund exceed the total annual License Fee then in effect.

5. **Fees and Charges.**

- a. Licensee shall pay Licensor a monthly license fee in the amount of \$374.95 for the Licensed Fibers. The license fee shall be for the operation and maintenance of the Licensed Fibers. The first payment shall be due no later than the September 30, 2018 and shall be prorated as necessary. Each subsequent monthly payment shall be due by the first day of month.
  - b. Licensee shall pay to Licensor a splice fee in the amount of Five Hundred Dollars (\$500) for each splice. Licensor shall invoice Licensee for the splice fee.
  - c. Licensee shall reimburse Licensor on a time and materials basis for any modification or equipment relocation requests that Licensee makes of Licensor. Licensor shall invoice Licensee for such work.
  - d. All invoices must be paid within thirty (30) days of the date of such invoice and in accordance with their terms without setoff or deduction. In the event that Licensee fails to pay any amounts owed to Licensor when due, Licensee shall pay to Licensor a late fee on the total payment due of one and one-half percent (1.5%) per month.
6. **Term.** This Agreement shall commence on the Effective Date, and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect for an initial term of five (5) years. Provided that Licensee is not then in default under this Agreement or any other agreement between the parties, Licensee shall have the option to renew the term of this Agreement for a mutually agreed upon annual license fee and upon other terms and conditions mutually agreeable to the Parties, one of which shall be the requirement for Licensee to renew or execute an amendment to this Agreement, reflecting such terms and conditions. The option to renew shall be applicable for one additional term of five (5) years. Licensee shall exercise the option by giving written notice of its election to Licensor at least ninety (90) days prior to the expiration of the initial term.
7. **Default/Termination.** Licensor may terminate this Agreement on giving Licensee thirty (30) days written notice in the event any of the following occur:

- a. Licensee fails to pay the license fee or the splice fee or any other sums owed to Licensor when due and does not cure that default within thirty (30) days after written notice thereof by Licensor.
  - b. Licensee defaults in the performance of any other term of this Agreement and does not cure that default within thirty (30) days after written notice thereof by Licensor, provided that such period shall be extended as reasonably necessary in the event that Licensee is proceeding in good faith with due diligence to cure such default but is unable to do so within thirty (30) days.
  - c. Licensor's grant of this license or Licensee's use of the Licensed Fibers becomes illegal under any applicable federal, state, or local law, rule, or regulation.
8. **Ownership.** At all times, the ownership and rights of possession to the Licensed Fibers, conduit, termination racks, and all other Licensor-installed equipment shall remain in Licensor, and Licensee shall have no ownership interest therein.
9. **Insurance.**
- a. **General.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as outlined below, issued by a company or companies licensed to do business in the State of Illinois and satisfactory to Licensor. Such insurance will be primary. Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee shall furnish Licensor with a certificate of insurance and, upon request, certified copies of the required insurance policies. The certificate shall reference this Agreement. Licensor will be given thirty (30) days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. The City of Rochelle and all of its elected officials, officers, departments, employees, including RMU, its employees, agents, and contractors (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except for the workers' compensation and employer's liability policies. All policies shall be written on an occurrence, and not on a claims made, basis. Licensee shall defend, indemnify and hold harmless the Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Agreement.
  - b. **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, broad form property damage, independent contractor's coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities (commonly known as XCU coverage). Limits of liability not less than

\$1,000,000 general aggregate, \$1,000,000 products/completed operations aggregate, \$1,000,000 personal injury, \$1,000,000 each occurrence.

- c. **Umbrella Liability Insurance.** Coverage to be in excess of commercial general liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.
  - d. **Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
  - e. **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than \$500,000 each accident.
  - f. **Property Insurance.** Licensee will be responsible for maintaining property insurance on its property and equipment associated with its use of the Licensed Fibers to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures. To the extent covered by property insurance, Licensee hereby releases Licensor from and waives all rights against Licensor for any loss or damage to property caused by fire or other peril if the property is insured for such loss or damage in any policy of insurance except if such loss or damage is caused by the fault or negligence of Licensor or anyone for whom Licensor is responsible.
10. **Indemnification.** Licensee is responsible for all actions it takes or causes to be taken in connection with its use of the Licensed Fibers. As a condition of using the Licensed Fibers, Licensee agrees to defend, indemnify and hold harmless the City of Rochelle and all of its elected officials, officers, departments, agencies, commissioners, council members, board members, representatives, employees, agents, and contractors, including RMU, its employees, Commission members, agents, and contractors (collectively, "Indemnified Parties") against any and all liability, claims, costs, fines, penalties, damages, expenses (including reasonable attorney fees of counsel selected by Licensor and all other costs and expenses of litigation), demands, lawsuits or disputes arising in any way from Licensee's use of the Licensed Fibers, any activities of Licensee under this Agreement, or Licensee's breach of any warranty, representation, obligation or other provision of this Agreement. The City of Rochelle and RMU agree to defend, indemnify, and hold harmless Licensee against any and all liability, claims, costs, fines, penalties, damages, expenses (including reasonable attorneys' fees of counsel selected by Licensor and all other costs and expenses of litigation), demands, lawsuits or disputes arising in any way from Licensor's negligence, willful misconduct, or Licensor's breach of any warranty, representation, obligation or other provision of this Agreement.
11. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE LICENSED FIBERS OR THIS AGREEMENT,

INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES, OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY CONSTRUCTION, RECONSTRUCTION, RELOCATION, REPAIR, OR MAINTENANCE PERFORMED BY OR TO BE PERFORMED BY LICENSOR OR ANY OTHER CAUSE WHATSOEVER.

12. **Lawful Uses.** Licensee agrees to use the Licensed Fibers only for lawful purposes. The transmission of any material in violation of any federal, state, or local laws or regulations is prohibited.
13. **NO WARRANTIES/REPRESENTATION.** LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED FIBERS, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WARRANTIES ARE HEREBY DISCLAIMED. THIS DISCLAIMER INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON- DELIVERIES, MISS-DELIVERIES OR INTERRUPTIONS OF LICENSED FIBERS HOWEVER CAUSED.
14. **Interruption of Licensed Fibers.** Licensee acknowledges that routine maintenance and periodic system repairs, upgrades, and reconfigurations, public emergency or necessity, force majeure, restrictions imposed by law, acts of nature, labor disputes and other situations, including mechanical or electronic breakdowns may result in temporary impairment or interruption of Licensed Fibers and Licensor shall have no liability arising out of service interruptions or impairments.
15. **Licensee's Representations.** Licensee represents and warrants:
  - a. It is a corporation duly organized and validly existing and in good standing under the laws of the State of Illinois.
  - b. To the extent required by applicable laws, it holds one (1) or more certificates of public convenience and necessity to provide telecommunications services within the State of Illinois, and it agrees to obtain and maintain such regulatory and other certifications during the term of this Agreement.
16. **Responsibility for Signals.** Licensee shall have full responsibility and liability for all signals Licensee transmits over the Licensed Fibers. Licensor shall have no responsibility or liability for any material contained in the signals transmitted by Licensee over the Licensed Fibers, including any liability with respect to the content of what is transmitted or any copyright or other intellectual property right therein.
17. **Responsibility for Taxes.** Licensee shall pay and be responsible for any and all personal and real estate taxes and assessments, general and special, levied and assessed against, or with respect to, or measured by, the Licensed Fibers. Licensee shall be solely responsible



420 North 6<sup>th</sup> Street  
Rochelle, IL 61068  
PH: 815-561-6161

With required written copy to:

Peterson, Johnson & Murray – Chicago LLC  
Attn: Dominick Lanzito  
200 West Adams – Suite 2125  
Chicago, IL 60606  
[dlanzito@pjmchicago.com](mailto:dlanzito@pjmchicago.com)

If to Licensee:

Digital Network Access Communications, Inc.  
Attn: Michael C. Hammett  
601 First Avenue  
Rochelle, Illinois 61068  
PH: 815-562-4290  
FX: 866-334-9985

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to its conflict of law provisions.
25. **Severability.** If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either Party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the Parties that this Agreement be administered as if not containing the invalid provision. In the event, however, that the invalidity does materially alter the essence of this Agreement, the Parties shall use diligent efforts to arrive at a written amendment regarding appropriate modifications to the Agreement.
26. **Incorporation of Exhibit/Recitals.** Exhibit A and Exhibit A-1 and all of the recitals above are incorporated into and form part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

Licensor:

\_\_\_\_\_

Licensee:

\_\_\_\_\_

Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit A  
LICENSED FIBERS

Qty	Description	Non- Recurrin g Fees	Non- Recurrin g Total	Month ly Recurri ng	Monthly Recurring Total
	Dark Fiber DNA's Office to Frontier's Office			\$ 374.95	\$ 374.95
2	Fiber Splicing Fee	\$ 500.00	\$ 1000.00		
Total			\$ 1000.00		\$ 374.95

Exhibit A-1  
Map Showing Routes for Licensed Fiber

