

RESIDENTIAL FIBER OPTIC BROADBAND SERVICE APPLICATION AND AGREEMENT

This Residential Fiber Optic Broadband Service Application and Agreement (“Agreement”) describes the terms under which DMEA Utilities Services, LLC, d/b/a Elevate (“Elevate”) will provide fiber optic broadband service (the “Service”) to you. *Please read the below terms carefully, as they are legally binding.*

AGREEMENT

The below individual or entity (the “Customer”) applies for the Service with Elevate and agrees to these terms:

1. **CUSTOMER’S OWNERSHIP OF SERVICE LOCATION.** Customer represents that it lawfully owns the real property at which Customer is to receive the Service (the “Service Location”), or that Customer has the permission of such owner(s) to enter this Agreement.
2. **COMPLIANCE WITH AGREEMENT AND TERMS OF SERVICE.** Customer agrees to comply with this Agreement and with Elevate’s policies, rules, and rate, fee, and price schedules (collectively the “Terms of Service”)—all of which constitute a contract between Customer and Elevate. A copy of the Terms of Service is available at www.dmea.com/content/elevate-fiber. Customer acknowledges and agrees that the Terms of Service may change from time to time, and will remain contractually binding. Customer’s use of the Service shall be deemed acknowledgment that Customer has read and agreed to the Agreement and the Terms of Service.
3. **BILLING AND PAYMENT.** Customer agrees to pay all current and future rates, fees, deposits, and other charges relating to the Service, including an installation fee covering basic installation for one data connection, one voice line (if applicable), and video set up (if applicable) in one facility completed during one installation trip. Customer agrees that failure to pay all rates, fees, and charges may result in termination of the Service and Elevate’s collecting on amounts owed. Installation fee is due upon scheduling of the install. The first bill will include first full month of service plus prorated amount for the month of install.
4. **TERM OF AGREEMENT AND TERMINATION BY CUSTOMER.**
 - a. **Minimum Service Level.** Customer agrees to buy a minimum level of Service of at least **\$49.95 per month for 12 full months**. If Customer disconnects service or defaults in payment before the 12-month period is over, Customer agrees to pay a termination fee equal to the remainder of the 12 months of service multiplied by the minimum level of Service.
 - b. **Termination Following Minimum Service Level.** After completing the minimum level of Service, Customer may terminate the Service at any time and for any reason.
5. **TERMINATION BY ELEVATE.** Notwithstanding anything else in this Agreement, Elevate may terminate or decline to provide Service to Customer at any time and for any reason, including but not limited to breach (including nonpayment) under this Agreement or for a violation of the Terms of Service.
6. **COMPLIANCE WITH APPLICABLE LAWS.** Customer agrees not to use the Service in a way prohibited by the Terms of Service or by local, state, or federal law—including but not limited to trademark, copyright or other intellectual property laws.
7. **GRANT OF EASEMENT.** As a condition of receiving Service, and without financial compensation, Customer will grant and transfer to Elevate (or, at Elevate’s direction, to a third party) a perpetual commercial communications easement on and through the Service Location to provide data, video and voice services on transport fiber, distribution fiber and service extension fiber, if applicable, for Service to both Customer and to other subscribers, and to perform necessary maintenance, service upgrades, and periodic right-of-way maintenance. If electric utility facilities cross the Service Location, these easements will generally follow those facilities.
8. **NO SERVICE LEVEL GUARANTEES.** Customer understands and agrees that Elevate does not guarantee that any particular amount of bandwidth on the Service will be made available to Customer or that any speed or throughput of Customer’s connection to the Service will be available to Customer. The Service is subject to both scheduled and unscheduled maintenance outages; Elevate will endeavor, however, to minimize the impact of scheduled maintenance

outages. Customer understands that the Service requires electricity at the Service Location and, if an electrical outage occurs, the Service (which may include telephone) may not function.

9. **ELEVATE EQUIPMENT AND SOFTWARE**. In order to receive the Service, it may be necessary for Customer to purchase or lease certain equipment (e.g., a modem and/or router) from Elevate. Upon providing Service to Customer, and in accordance with the Terms of Service, Elevate may provide Elevate or third-party software to enable and enhance the Service.
10. **CUSTOMER EQUIPMENT**. Customer is responsible for maintaining the wiring and all other applicable devices within the Service Location needed to utilize the Service. Customer is responsible for meeting and complying with the minimum computer, device, and system requirements established by Elevate and contained within the Terms of Service available at www.dmea.com/content/elevate-fiber.
11. **TECHNICAL SUPPORT**. Unless otherwise provided by the Terms of Service, Elevate does not provide technical assistance with third-party hardware or software.
12. **LIMITATION OF LIABILITY**. Customer agrees that the damages to which it is entitled from Elevate or from any other party under this Agreement are limited to the cost of the Service to Customer and, if applicable, to obtain the replacement or repair of any defective software or equipment provided by Elevate. ELEVATE, ITS OFFICERS, OPERATING MANAGERS, OWNERS, PARENT COMPANY, EMPLOYEES, AFFILIATES AND AGENTS (“ELEVATE PARTIES”) WILL NOT BE LIABLE FOR ANY INTERRUPTIONS IN SERVICE OR LIABLE FOR ANY DELAY OR FAILURE TO PERFORM, NOR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SERVICE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST PROFITS, COMPUTER FAILURE OR MALFUNCTION, ANY DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. THE ELEVATE PARTIES MAKE NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AND NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, REGARDING ELEVATE EQUIPMENT, SOFTWARE, OR ANY SERVICES FURNISHED TO CUSTOMER. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL THE ELEVATE PARTIES HAVE ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE EQUIPMENT OR RESULTING FROM ELEVATE’S FURNISHING OR FAILURE TO FURNISH ANY SERVICES OR EQUIPMENT TO CUSTOMER OR FROM ANY FAULT, FAILURE, DEFICIENCY OR DEFECT IN SERVICES OR EQUIPMENT FURNISHED TO CUSTOMER.
13. **NO WARRANTY**. Elevate does not warrant uninterrupted use of the Service, nor does it warrant that the Service will be error-free or free of any viruses, worms, spam, pop-up advertising, spyware, adware, denial of service attacks or other harmful components. Elevate does not warrant that any data or files Customer sends or receives via the Service will be transmitted in uncorrupted form, within a reasonable time, or free from unauthorized access by others or that other users will be unable to gain access to Customer’s information. THE SERVICE AND ELEVATE EQUIPMENT ARE PROVIDED ON AN “AS-IS BASIS” AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, FOR THE SERVICE, EQUIPMENT, AND SOFTWARE ELEVATE PROVIDES AND ELEVATE DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.
14. **INDEMNITY**. Customer shall defend, indemnify, and hold harmless Elevate and its corporate parent, Delta-Montrose Electric Association—along with their directors, officers, and employees—against any third-party claims, damages, losses, attorney’s fees, and expenses relating to or arising from Customer’s breach of this Agreement or its violation of the Terms of Service.
15. **SUCCESSORS AND ASSIGNS**. Elevate’s rights and obligations under this Agreement shall accrue to any of Elevate’s successors or assigns. Customer may not sell, transfer, or assign this Agreement to a third party without Elevate’s advance written consent.
16. **JURISDICTION; VENUE; CHOICE OF LAW**. Customer agrees that exclusive jurisdiction for any claim or dispute with Elevate relating to this Agreement or the Service resides in the courts of Colorado and that this Agreement shall be governed by Colorado law. If legal action is necessary to enforce or interpret the terms of this Agreement or compel performance thereof, the substantially prevailing party shall be entitled to reasonable attorney’s fees and costs in addition to any other relief to which such party may be entitled.



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17. **CONSENT TO COMMUNICATIONS.** Customer consents to receive autodialed and/or prerecorded calls, text/SMS messages and other communications from Elevate, or on behalf of Elevate, including marketing and promotional communications, at the phone number, email address and service address listed on Customer's account. Consent for marketing and promotional communications is not required as a condition to receive services from Elevate.
18. **SECURITY.** Customer agrees that using the Service presents certain security risks that may enable other Internet users to gain access to or use of Customer's equipment or information. Customer is solely responsible for taking all appropriate security measures when using the Service, and agrees that neither Elevate nor Delta-Montrose Electric Association shall be responsible for security or information breaches. Customer agrees that Elevate may block traffic to and from any source, including, without limitation, the deletion of any electronic mail, as it deems necessary to secure its network and/or eliminate spam.
19. **AMENDMENT OF THIS AGREEMENT AND THE TERMS OF SERVICE.** Elevate reserves the right to modify this Agreement and the Terms of Service at any time by posting changes online at least 21 days in advance at www.dmea.com/content/terms-service. Customer's continued use of the Service following online notice of such modification shall be deemed to be the Customer's acceptance of any such modification. If Customer does not agree to any modification of this Agreement or the Terms of Service, Customer must immediately cease using the Service and notify Elevate that Customer is terminating the Service. (Terminations during the 12-month minimum level of Service period, however, are still subject to those charges.)
20. **ENTIRE AGREEMENT.** This Agreement and the Terms of Service are the only terms and conditions that govern the Service. No undertaking, representation or warranty made by any agent or representative of Elevate in connection with the sale, installation, maintenance or removal of the Service shall modify or amend this Agreement or the Terms of Service.