

## Elevate Fiber Business Master Service Agreement

This Master Service Agreement (Agreement) describes the terms under which DMEA Utilities Services, LLC, d/b/a Elevate (Elevate) will provide business fiber optic telecommunications service (the Service) to the individual or entity identified below (Customer). ***Please read carefully, as this is a binding legal agreement.***

1. **Agreement.** Customer agrees to purchase the Service from Elevate under the terms of this Agreement and in accordance 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 upon request, or at <https://www.elevateinternet.com/legal-information>. Customer acknowledges and agrees that the Terms of Service may change in the future, and will remain contractually binding. Customer’s use of the Service shall be deemed acknowledgement that Customer has read and agreed to the Agreement and the Terms of Service.
2. **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.
3. **Pricing and Level of Service.** Customer agrees to purchase the Service as indicated in the Service Order Summary, attached to and part of this Agreement, for a minimum of 12 full months (the “Initial Term”).
4. **Billing and Payment.** Customer agrees to pay all current and future rates, fees, deposits, and other charges relating to the Service, and agrees that failure to do so may result in termination of the Service and Elevate’s collecting on amounts owed. Rate charges begin upon completed installation of the Service at the Service Location and may be prorated for the first and last month of service. Rates and fees are subject to change following expiration of the Initial Term.
  - a. **Payment of Invoices.** Payment terms are net 25 days from date of invoice, and Customer must provide notice of any invoice error within that time. Elevate reserves the right to immediately terminate Service if Customer fails to pay invoices in full when due. Fees to restart a Customer’s service may also apply.
  - b. **Late Fees.** Late accounts are subject to a fee of 1% per month on the outstanding balance, or such other late fee or collection charge as Elevate may adopt in the Terms of Service.
  - c. **Taxes and Fees.** Customer is responsible for applicable taxes that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges, however designated. If Customer is entitled to an exemption from any applicable tax or fee, Customer will present Elevate with a valid exemption certificate (in a form reasonably acceptable to Elevate).
5. **Term of Agreement and Termination by Customer.**
  - a. **Minimum Service Length.** Customer agrees to purchase the Service for the full 12-month Initial Term, as indicated above in Section 3. If Customer disconnects service or defaults in payment before the Initial Term is complete, Customer agrees to pay a termination fee equal to the number of remaining months in the Initial Term multiplied by the level of Service cost selected in the Service Order Summary.
  - b. **Termination following the Initial Term.** After the Initial Term, Customer may terminate this Agreement at any time and for any reason.



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6. **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) of this Agreement or for a violation of the Terms of Service.
7. **Compliance with Terms of Service and Applicable Laws.** Customer agrees not to use the Service in a way prohibited by the Terms of Service (including any Acceptable Use Policy), or by local, state, or federal law—including but not limited to trademark, copyright or other intellectual property laws.
8. **Grant of Easement.** As a condition of receiving Service, and without financial compensation from Elevate, Customer will grant and transfer to Elevate (or, at Elevate's direction, to Delta-Montrose Electric Association) 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 customers, as well as to perform necessary maintenance, service upgrades, and periodic right-of-way maintenance. If electric utility facilities cross the Service Location, these easements will follow those facilities.
9. **Access to Service Location.** Customer agrees to let Elevate access the Service Location to the extent reasonably required to provide the Service and to exercise any easement rights.
10. **Service Guarantees.** Elevate agrees to provide Customer with the guaranteed service level contained within Elevate's Broadband Service Level Agreement for Business Customers, which are part of the Terms of Service.
11. **Service Maintenance.** The Service is subject to both scheduled and unscheduled maintenance outages; Elevate will endeavor, however, to minimize the impact of scheduled maintenance outages and to provide advance notice when possible. Except in exigent circumstances, Elevate will conduct scheduled maintenance between 12:00 a.m. and 6:00 a.m. Mountain Prevailing Time. 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.
12. **Elevate Equipment and Software.** To receive the Service, Customer may need to purchase or lease equipment (e.g., a modem and/or router) from Elevate. The Terms of Service apply to this equipment. Upon providing Service to Customer, and under the Terms of Service, Elevate may provide Elevate or third-party hardware and/or software to enable the Service. Customer is responsible for preparing Service Location for installation of equipment.
13. **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 <https://www.elevateinternet.com/legal-information>.
14. **Technical Support.** Unless otherwise provided in the Terms of Service, or if agreed to by Customer in the Service Order Summary, Elevate does not provide technical assistance with third-party hardware or software.
15. **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.

- 16. No Warranty.** Except as otherwise provided in its Broadband Service Level Agreement for Business Customers, 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, and 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.
- 17. 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 use of the Service, breach of this Agreement, or violation of the Terms of Service.
- 18. 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.
- 19. Resale.** Customer may not resell the Service to third-party end users absent Elevate's prior written consent, which may be withheld at Elevate's discretion. Any agreed-upon resale will require that Customer agree to indemnify, defend, and hold Elevate harmless from claims made against Elevate by such end users.
- 20. Consent to Communications.** Customer consents to receive communications from Elevate relating to the Service, including regular U.S. mail, emails, text messages, and phone calls. Customer may opt-out of any non-emergency or non-billing communications.
- 21. 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.
- 22. 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 <https://www.elevateinternet.com/legal-information>. Customer's continued use of the Service



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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 Initial Term, however, are still subject to those charges.)

**23. Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**24. Entire Agreement.** This Agreement—including the Service Order Summary—and the Terms of Service are the only terms and conditions that govern the Service. There are no promises or representations other than those set forth in this Agreement.

**25. Force Majeure.** Elevate shall not be liable for any failure of performance of the Service due to causes beyond Elevate's reasonable control ("force majeure event"). In the event that Elevate is unable to deliver Service as a result of a force majeure event, Customer shall not be obligated to pay Elevate for the affected Service for so long as Elevate is unable to deliver the affected Service.

**26. Jurisdiction; Venue; Choice of Law; Attorney Fees.** 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.

**27. Other Provisions.**

- a. **Relationship of the Parties.** The relationship between Customer and Elevate shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, without limitation, for federal income tax purposes.
- b. **No Waiver.** No failure by either party to enforce any right(s) hereunder shall constitute a waiver of such right(s).
- c. **Severability.** If any term of this Agreement is to any extent invalid or otherwise unenforceable, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
- d. **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Electronic or e-signatures shall be sufficient to bind the parties to this Agreement.



## Elevate Fiber Business Master Service Agreement

IN WITNESS WHEREOF, the parties have entered into this Agreement effective the date of Customer's signature.

### CUSTOMER INFORMATION

Business name (please print): \_\_\_\_\_

Business contact name (print): \_\_\_\_\_

Business phone number: \_\_\_\_\_ Contact phone number: \_\_\_\_\_

Email address: \_\_\_\_\_

Billing address: \_\_\_\_\_

*(Street or PO Box, City, State, and Zip Code)*

Service/physical address: \_\_\_\_\_

*(Street, City, State, and Zip Code)*

\_\_\_\_\_  
**Customer signature** (sign on the above line)

\_\_\_\_\_  
**Date** (date on the above line)

### **By signing this Master Service Agreement:**

1. Customer has reviewed and agrees with the terms of this Agreement and the Terms of Service posted online at [www.elevatefiber.com/termsofservice](http://www.elevatefiber.com/termsofservice). Customer acknowledges and agrees that this Agreement and Terms of Service may change in the future but remain binding.

2. Customer represents it owns the Service Location or has permission from the property owner(s) to sign this Agreement, and agrees to grant an easement as provided in Section 8.

3. Customer agrees to pay the installation fees, rates, and other service charges identified on the attached Service Order Summary and in the Terms of Service, all of which are subject to change.

4. Customer agrees to purchase the Service indicated on the Service Order Summary for at least 12 months.

5. **OPTIONAL OPT-IN FOR AUTODIALED MARKETING CALLS AND TEXT MESSAGES:** Customer consents to receiving autodialed marketing calls and text messages from Elevate at this number (note: consent is not required to receive service).

Phone #: \_\_\_\_\_

Initials: \_\_\_\_\_

### **For DMEA UTILITIES SERVICES, LLC (Elevate) use only:**

Elevate representative (print): \_\_\_\_\_

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

Elevate representative signature: \_\_\_\_\_

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

## Elevate Master Service Agreement Service Order Summary

**1. Select your Elevate service by initialing next to your desired service package:**

Business Internet Service	Monthly Price <i>(without taxes and fees)*</i>	Initials
<p><b>100 Mbps / 100 Mbps Internet</b> For small businesses: connect multiple workstations and wireless devices (2 - 15 average). Access your merchant services and cloud storage. Upload and download at the same fast rate. Dedicated network with business level support and 4-hour repair response time. Service guarantee of 99.9%.</p>	<b>\$79.95</b>	
<p><b>300 Mbps / 300 Mbps Internet</b> Power your business success. Access cloud services with no delays. Transfer data and large files and run video security systems. Connect multiple workstations and wireless devices (15 - 35 average). Offer fast guest WiFi. Dedicated IP and network with business level support. Service guarantee of 99.9% and 4-hour repair response time.</p>	<b>\$159.95</b>	
<p><b>1 Gig / 1 Gig (1,000 Mbps / 1,000 Mbps) Internet</b> The ultimate connection for your business. Access cloud services, transfer data and large files. Support internal communications (chat, intranet and more). Connect 35+ workstations and wireless devices. Run video security systems and manage remote servers. Offer blazing fast guest WiFi to customers. Dedicated IP and network with business level support. Service guarantee of 99.9% and 4-hour repair response time.</p>	<b>\$319.95</b>	
<p><b>One-time installation fee</b> The installation charge covers the first 300 feet on a basic installation, one data connection, one voice line, and in one facility completed during one installation trip. Additional wiring, multiple installation trips, or the need to perform a more complex installation may result in additional charges at Elevate's discretion. Fiber service drops longer than 300 feet may result in additional costs.</p>	<b>\$100</b>	

*\* Customer is responsible for all applicable federal, state, and local or other surcharges, fees, user fees, and universal service contributions.*