

## STANDARD BUSINESS TERMS AND CONDITIONS FOR BROADBAND SERVICES OF ELEVATE ("TERMS OF SERVICE")

### 1. GENERAL

- 1.1 **Applicability.** These Terms of Service apply to and govern all business services ("Services") provided by DMEA Utilities Services, LLC ("Elevate") and used by the customers (each, a "Customer"). By using the Services, Customer agrees to abide by the binding terms of these Terms of Service. Elevate may modify these Terms of Service at any point in the future and all such modifications are also binding. Any Customer who does not agree to be bound by the terms of these Terms of Service must immediately stop using the Services and notify Elevate to terminate its account.
- 1.2 **Elevate's Right to Suspend or Terminate Services.** Elevate reserves the right to immediately suspend, terminate, or restrict use of the Services without notice if such use—in Elevate's sole discretion—violates these Terms of Service or interferes with Elevate's Services or network.

### 2. BUSINESS USE POLICY. To ensure the quality, security, and reliability of its Services, Elevate has adopted the following acceptable business use policy (the "Business Use Policy"), which applies to Customer and forms a part of these Terms of Service.

- 2.1. **Permitted Use.** Customer will use the Services solely for its own business or commercial enterprise. Reselling or otherwise redistributing the Services—including by wireless means—is strictly prohibited.
- 2.2. **Customer's Responsibility for Use of the Services.** Customer is responsible for any transmission sent, received, posted, accessed, or stored via the Services through Customer's account, including the content of any communication. Customer is also responsible for any misuse of the Services, violation of law, violation of this Business Use Policy, or violation of the other Terms of Service that occurs through Customer's account—whether by Customer, or by an authorized or unauthorized third party using the Customer's Services (each, a "User").
- 2.3. **Illegal or Harmful Use Prohibited.** Customer may use the Services only for lawful purposes. Any use of the Services to transmit, receive, or store material that violates any law or which is harmful is prohibited. By way of example only, the following illegal and/or harmful conduct is prohibited:
- 2.3.1. **Offensive Materials:** Disseminating or posting material that is unlawful, libelous, defamatory, obscene, indecent, explicit, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable.
- 2.3.2. **Infringement:** Infringement of intellectual property rights such as copyright, trademark, patent, trade secret or other intellectual property right.
- 2.3.3. **Fraudulent Conduct:** Offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., pyramid schemes, chain letters, "pump and dump" stock fraud, make-money-fast schemes).

- 2.3.4. **Failure to Abide by Third-Party Policies:** Violating the rules, regulations, or policies that apply to any third-party network, server, or computer database that you access.
- 2.3.5. **Harmful Content:** Disseminating or posting harmful content including viruses, Trojan horses, worms, or any other computer or other programming routines that may damage, interfere with, secretly intercept or seize any system, program, data or personal information.
- 2.3.6. **Abuse of Newsgroups or Internet Chatrooms:** Customer may not spam newsgroups or chat rooms and must comply with the written charters, rules, or terms of service for those forums. In addition, Customer may not cross-post the same or substantially similar message excessively, post binary files to non-binary groups, or flood or disrupt a group.
- 2.4. **Electronic Communications.** Customer may not use the Services to distribute, publish, or send unsolicited advertisements, solicitations, commercial e-mail messages or promotional messages of any kind (commonly known as “spam”). Nor may Customer use the Services to distribute, publish, or send unsolicited informational announcements, empty messages (or messages containing no substantive content), or very large messages that may disrupt a server. Collecting or harvesting email addresses from the Internet for the purpose of sending unsolicited bulk email (or to provide collected addresses to others for that purpose) is also prohibited.
- 2.5. **Other Prohibited Activities.** Any use of the Services that violates this Business Use Policy or that negatively impacts network security, quality, or integrity is prohibited. Such violations include, without limitation:
  - 2.5.1. Unauthorized access to or use of data, systems, or networks, including any attempt to probe, scan, or test the vulnerability of a system or network, or to breach security or authentication measures without express authorization of the owner of the system or network.
  - 2.5.2. Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner or network.
  - 2.5.3. Interference with Internet service to any user, host, or network, including but not limited to: mail bombing, flooding, or denial of service attacks.
  - 2.5.4. Failing to abide by the acceptable use policies of any networks, machines, or services that are accessed through the Services.
  - 2.5.5. Forging the header of any transmitted information packet, email, or Usenet posting.
  - 2.5.6. Modifying or tampering with any hardware, software, or configuration provided by Elevate including but not limited to routers, switches, and cable modem configuration files.
  - 2.5.7. Using manual or electronic means to avoid any limitations established by Elevate or attempting to gain unauthorized access to, alter, or destroy any information relating to any Elevate customer or end-user.

- 2.5.8. Storing any program, utility or file on Elevate servers the use of which would constitute a violation of this policy. (For example, it is a violation to store hacker scripts, IRC bots, or spamming software on Elevate servers.)
- 2.5.9. Disrupting, degrading or otherwise adversely affecting Elevate's network or computer equipment owned by Elevate or other Elevate customers.
- 2.5.10. Excessive use of bandwidth that, in Elevate's sole opinion, places an unusually large burden on the Elevate Services or exceeds normal usage. Elevate has the right to impose limits on excessive bandwidth consumption via any means.
- 2.5.11. Assuming or assigning an Elevate IP address that was not allocated to the User by Elevate.

**3. SECURITY.** Customer is solely responsible for the security of any device connected to the Services, including any data stored on that device. 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 and its Users shall take all necessary steps to avoid actions that result in the abuse of a resource on Customer's network. Examples of abuse of resources include open news servers, open SMTP servers, unsecure wireless routers, and unsecure proxy servers. If Customer is using a wireless router, Elevate requires that any wireless network be secure and encrypted. Customer and its Users must take appropriate action to prevent their systems from becoming infected with and/or distributing computer viruses such as but not limited to worms, "Trojan horses," denial-of-service attacks, and bots. 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.

#### **4. SERVICE MAINTENANCE AND MANAGEMENT**

- 4.1. **Network Management.** Elevate uses a variety of reasonable network management tools and practices consistent with industry standards. In the event that periods of congestion necessitate such management, Elevate has available the following tools and practices (without limitation and as may be adjusted over time): (i) use of an upper limit of bandwidth allocated for uploading of files during congested periods; (ii) Subscriber Traffic Management (STM) technology to temporarily lower the priority of traffic with the greatest impact on peak congestion; (iii) spam filtering and detection techniques; and (iv) measures to protect the security and integrity of its network, resources and Customers. In limited instances if employed, these techniques may affect the throughput rate at which Customers may send and receive data, the ability of users to establish session connections within the network, or result in the delay of certain traffic during times of peak congestion.
- 4.2. **Monitoring.** Elevate reserves the right at any time to monitor bandwidth, usage, transmissions, and/or content on the Services. Elevate need not proactively or routinely monitor a Customer account's use of the Services for violations of this Business Use Policy, though it reserves the right to do so. If Elevate is alerted to violations or potential violations of this Business Use Policy, Elevate may take whatever measures it deems necessary and appropriate to investigate, stop, and/or prevent those violations.

- 4.3. **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.
- 4.4. **Site Visits and Repairs.** If Elevate reasonably determines that the cause of any Customer service call is not due to a problem arising from Elevate's Network or Elevate's equipment, but rather is due to Customer's equipment or facilities, or a third party, then Elevate may invoice Customer for the service call at Elevate's then-current commercial rates, plus any charges for equipment repair or replacement as a result of Customer or third party damage that may be necessary.

## 5. EQUIPMENT AND SOFTWARE

- 5.1. **Elevate Equipment and Software.** Elevate may sell or lease equipment (e.g., a modem and/or router) to Customer, and the Terms of Service apply to this equipment. Elevate may provide Elevate or third-party software to enable or enhance the Service. All rights and ownership of such software shall remain under ownership and/or control of Elevate. Customer is responsible for preparing Service Location for installation of equipment.
- 5.2. **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 necessary to use the Service. Elevate does not provide technical assistance with third-party hardware or software, such as customer provided routers, switches, bridges, computers, laptops, gaming systems, phones, fax machines, printers, WiFi boosters, or other consumer grade accessories or devices. If Elevate installs Customer provided communications equipment, Elevate shall not be responsible for the operation or maintenance of such equipment.

6. **LAW ENFORCEMENT AND COMPLIANCE WITH APPLICABLE LAWS.** Elevate may refer potential violations of laws to the proper authorities, may cooperate in the investigation of any suspected criminal or civil wrong, and will cooperate with authorities when required to do so by law, subpoena, or when the public safety is at stake. Elevate assumes no obligation to inform Customer that information has been provided pursuant to law enforcement, court order, or by other legal obligation. If Elevate becomes aware that Customer's use of the Services may violate a law or this Business Use Policy, Elevate reserves the right to take all such actions appropriate to address that violation. Such action includes but is not limited to suspension of service, reduction of service resources, and termination of service. Elevate is not liable for any such responsive action and these actions are not exclusive. Elevate may take any other legal or technical action it deems appropriate.

## 7. STANDARD PAYMENT TERMS.

- 7.1. **Change Requests.** Any changes to the Services or changes or additions of equipment requested by Customer are the sole financial responsibility of the Customer.

- 7.2. **Invoice Disputes.** Customer must provide Elevate with written notice of any disputed charges within sixty (60) days of the invoice date on which such disputed charges appear in order to receive any credit that may be due. Customer must have and provide a reasonable basis for disputing any charges.
- 7.3. **Reconnect Fee; NSF Fee; Collection Charges.** If Services are suspended due to late payments, Elevate may require Customer to pay a reconnect fee, in addition to any past due charges and late fees prior to reconnecting the Services. Elevate may charge a reasonable fee for all returned checks and bank card or credit card charge-backs. Customer will reimburse Elevate for reasonable attorneys' fees and any other costs associated with collecting any unpaid amounts due.
- 7.4. **Credit Approval.** Elevate's provision of the Services is subject to Elevate's credit approval of Customer. As part of the credit approval process, Elevate may require Customer to provide a deposit or other security. Elevate may provide Customer's payment history or other billing/charge information to any credit reporting agency or industry clearinghouse.
- 8. CONSENT TO COMMUNICATIONS.** Customer consents to receive communications, including for marketing purposes from Elevate or on its behalf, including by regular U.S. mail, emails, text messages, and phone calls to any number, address, or email that Customer provides to Elevate (or that Elevate issues to Customer). Customer may opt-out of any non-emergency or non-billing communications. Elevate (or persons acting on its behalf) will have the right and Customer hereby authorizes Elevate to use automated dialing systems or artificial or recorded voices to contact Customer or leave Customer messages if the call goes to voicemail.
- 9. OWNERSHIP OF INTELLECTUAL PROPERTY.** Elevate and any other suppliers of software and services provided by Elevate to Customer will retain all right, title and interest in and to the Intellectual Property Rights in the Services, and any derivative works thereof. For purposes of this Agreement, "Intellectual Property Rights" means all rights under or associated with any patents, patent applications, copyrights, trademarks, service marks, trade secrets, moral rights, software, applications and any other intellectual property, industrial and proprietary rights.
- 10. LIMITATION OF LIABILITY; NO WARRANTY; INDEMNITY.** Nothing in these Terms of Service impairs or modifies those portions of the Agreement addressing limitation of liability, no warranty, or indemnity.
- 11. REVISIONS TO THESE TERMS OF SERVICE.** From time to time, Elevate will make revisions to these Terms of Service. Elevate will provide notice of such revisions by posting revisions to [www.elevateinternet.com/legal-information](http://www.elevateinternet.com/legal-information), or sending an email to the Customer's primary email address on file with Elevate. Customers should regularly visit Elevate's website and review the Terms of Service to ensure that their activities conform to the most recent version. In the event of a conflict between the Agreement and these Terms of Service, the terms of these Terms of Service will govern. Questions or concerns about these Terms of Service should be addressed to [questions@elevatefiber.com](mailto:questions@elevatefiber.com).