

## Elevate Fiber Business Service Agreement

This Business Service Agreement ("Agreement") describes the terms under which DMEA Utilities Services, LLC, d/b/a Elevate ("Elevate") will provide business service(s) (the "Service") to the individual or entity identified below ("Customer") through Elevate's fiber optic network. ***Please read the below terms carefully.***

### AGREEMENT

1. **Terms of Service.** Customer agrees to purchase the Service from Elevate under the terms of this Agreement and in accordance with Elevate's business policies, rules, and charges (collectively the "Terms of Service")—all of which constitute a contract between Customer and Elevate. The Terms of Service are available at <https://www.elevateinternet.com/legal-information>. Customer's use of the Service will be deemed an acknowledgement that Customer has read and agrees to the Agreement and the Terms of Service.
2. **Customer's Ownership of Service Location.** Customer represents that it owns the real property where the Service will be received (the "Service Location"), or has the permission of the 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 charges relating to the Service, and agrees that failure to pay those charges may result in Service termination 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. Charges 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.
  - 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 any applicable taxes that arise in any jurisdiction, however designated. If Customer is entitled to an exemption from any applicable tax or fee, Customer will provide 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 Initial Term. 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 the Service at any time and for any reason.
6. **Termination by Elevate.** Elevate may terminate or decline to provide Service to Customer at Elevate's discretion, including for breach 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, 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 agrees to grant Elevate (or, at Elevate's direction, to Delta-Montrose Electric Association) a perpetual commercial communications easement on and through the Service Location to provide Service to both Customer and to other customers. Elevate also has the right to utilize the Service Location in a reasonable manner 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. **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.
12. **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, 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.
13. **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.
14. **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.
15. **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.
16. **Amendment of this Agreement and the Terms of Service.** Customer agrees that the Terms of Service may change from time to time. Elevate may 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 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 and 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.)

17. **Entire Agreement.** This Agreement, including the Service Order Summary and the Terms of Service are the only terms and conditions that govern the Service, and the Terms of Service control if there's any conflict with the Agreement.
18. **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.
19. **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.
20. **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.
  - e. **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.

*Signature Page Follows*



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

**CUSTOMER INFORMATION**

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

Business Contact Name: \_\_\_\_\_

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)*

**Authorized Signature:** \_\_\_\_\_

Name: \_\_\_\_\_

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

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

OPTIONAL OPT-IN FOR AUTODIALED MARKETING CALLS AND TEXT MESSAGES: Customer consents to receiving autodialed marketing calls and text messages (including special promotions) 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 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ELEVATE BUSINESS SERVICE AGREEMENT  
SERVICE ORDER SUMMARY**

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

<b>Business Internet Service</b>	<b>Monthly Price (without taxes and fees)*</b>	<b>Initials</b>
<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 99.999%.</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 99.999% 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 99.999% 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.



## Acknowledgement of Elevate Terms of Service Delivery and Internal Technology Support Limitations

I acknowledge that I have read and I understand the following Terms of Service Delivery and Internal Support Limitations for Elevate Fiber.

Customer agrees:

- > Elevate Fiber's internet service is certified and maintained up to the service demarcation on my property, such as the Optical Network Terminal (ONT) or Elevate provided phone block.
- > Elevate Fiber does not provide Internal Technology (IT) or phone system support beyond the service handoff point (service demarcation).
- > Elevate Fiber's installation technicians are not responsible for setting up customer facing IT or phone systems.
- > Technical issues experienced with internal networks, IT systems, or phone systems are the responsibility of the customer.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Business Name: \_\_\_\_\_ (Customer)

### Internal Technology Support Information

To help us make sure your business's transition to Elevate Fiber goes smoothly, please complete the following information about your business's IT and phone support services.

#### Please indicate if you have existing IT or phone support:

\_\_\_\_\_ No\*

\_\_\_\_\_ Yes. Please provide the following information. We recommend you ensure all required technical support parties are present at the time of your install.

#### IT Support Contact Information

Company name (if applicable): \_\_\_\_\_

Contact name: \_\_\_\_\_ Phone: \_\_\_\_\_

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

Address (street, city, state, zip): \_\_\_\_\_

#### \*If no:

We would be happy to provide you with a list of preferred local businesses that can assist with your IT or phone system needs. Please indicate below if you would like us to provide this information.

\_\_\_\_\_ Yes, please send me your IT support referral list.

\_\_\_\_\_ No, Customer will manage its own IT and/or phone systems support during the transition.