

Terms and Conditions

Fatbeam, LLC (“Fatbeam”) has adopted the following terms and conditions (“Terms”) for providing the framework to govern customer’s, as named on the Master Service Agreement (“Customer”), use, purchase and ordering of certain communication services (“Service or Services”) from Fatbeam. Each may be referred to herein as a “Party” and collectively as the “Parties.”

These Terms, along with the Master Service Agreement, Service Order(s) (defined below), any attachments, and any filed tariff(s), comprise the entire agreement between the Parties (“Agreement”).

Please read these Terms carefully prior to signing the Master Service Agreement (“MSA”) as Customer’s access and use of the Services is conditioned upon its acceptance with these Terms which attached to and become a part of the MSA executed between Fatbeam and Customer. Unless otherwise defined herein, capitalized terms shall have the same meaning as defined in the MSA.

- 1. Order of Precedence.** In the event, there is a conflict between any term(s) agreed to by the Parties, precedence will be given in the following order: (a) the Service Order but solely with respect to the Service(s) covered by that Service Order; (b) the MSA; and (c) these Terms.
- 2. Service Orders.** Customer may, from time to time, request Fatbeam provide it with Services as further delineated, and agreed to, in an order (“Service Order”). Customer is solely responsible for the accuracy of the information provided in the Service Order(s). Fatbeam agrees to provide to Customer, and Customer agrees to procure from Fatbeam, the Service(s) at the location(s), and for the number of months (“Service Term”), set forth in the applicable Service Order. Each Service Order shall clearly set forth the Service Term, type of Service(s), location(s), Demarcation Points (defined below), monthly recurring charge (“MRC”), non-recurring charge (“NRC”), as well as any additional specific terms for the Service(s).
- 3. Service Term.** The Services ordered in a Service Order may be installed and delivered to Customer on different dates. The Service Term shall be stated in every Service Order, will commence once all Services ordered under such Service Order are delivered to the Demarcation Point (defined below), and will automatically renew for successive one (1) year terms, each a “Renewal Service Term,” unless terminated by Customer or Fatbeam with thirty (30) days written notice prior to the completion of the Service Term or the then-current Renewal Services Term. Any such renewal shall be on the terms of the original Service Order; provided, however, Fatbeam shall have the right during any such renewal period to increase the price of the Service upon providing Customer with ninety (90) days’ prior written notice of any such price increase.
- 4. Installation of Service.** Fatbeam will use reasonable efforts to install Service(s) on Customer’s desired due date; however, Fatbeam does not guarantee that Service will be installed and provisioned on such date. Customer will provide all reasonable information, authorizations,

and access required by Fatbeam for the purpose of performing installation, maintenance and repair of the Service(s) or Fatbeam's network. This includes, but is not limited to, obtaining any necessary license(s) granting Fatbeam access to the Facility (defined below) for the duration of the Service Term.

- 5. Demarcation Point.** Every Service Order will specify the location where Fatbeam's facilities interconnect with Customer's or any third party's facilities ("Demarcation Point"). Any facilities, fiber, equipment, or rights located on Fatbeam's side of the Demarcation Point will be maintained, repaired, operated, controlled, and at all times remain the sole and exclusive property of Fatbeam ("Fatbeam's Fiber"). Any facilities, fiber, equipment, or rights located on Customer's side of the Demarcation Point will be maintained, repaired, operated, controlled, and at all times remain the sole and exclusive property of Customer ("Customer Equipment"). Customer must procure and maintain, at its sole cost and expense, Customer Equipment which is technically compatible with the Service(s) delivered and Fatbeam's Fiber.
- 6. Installation of Fiber.** Depending on the Services ordered, Fatbeam may deliver the Service(s) over its fiber optic cable network to the Demarcation Points at Customer's locations specified in the applicable Service Order. Prior to the Service Activation Date (defined below), the Parties will agree on the specific location of each Demarcation Point. Customer shall be solely responsible for granting to, or assisting Fatbeam in obtaining from the owner of the building or property where the Demarcation Points reside ("Facility" or "Facilities"), as the case may be, all easements, rights-of-way, or licenses necessary for Fatbeam to bring fiber from the property boundary of each Facility to that Facility's Demarcation Point for the duration of the Service Term. If Fatbeam is required by a third party to pay to obtain and maintain any such easement, right-of-way or license to access the Facility, Customer agrees to reimburse Fatbeam for its costs related to obtaining and maintaining such easements, rights-of-way or licenses during the Service Term. Fatbeam shall provide reasonable notice under the circumstances to Customer prior to entering Customer's Facilities to install, maintain or repair any of the fiber and/or Fatbeam's equipment. Customer will provide a safe place to work and comply with all applicable laws regarding the working conditions at the Customer's locations. All installation of fiber will conform to the Fiber Specifications (defined below).
- 7. Fiber Specifications.** Prior to the Service Activation Date (defined below) for all Services delivered over fiber, Fatbeam will complete end-to-end connectivity testing, bi-directional span testing, and a power loss measurement. The results of these test will be provided to Customer upon its written request. The power loss measurements and OTDR traces shall be made at 1310 nm and 1550 nm, and performed bi-directionally. Spans that do not include field splices will receive power meter testing only. The end-to-end loss value, of single mode fiber, as measured with an industry-accepted laser source and power meter shall have an attenuation rating of less than or equal to the following: (i) at 1310nm: $(0.40 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$; and (ii) at 1550nm: $(0.30 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$ ("Fiber Specifications").
- 8. Billing Commencement.** Fatbeam reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Service that does not affect the quality, cost or type of Service contracted for. "Service Activation Date" is the date Fatbeam delivers Service to the Demarcation Point and occurs per Service, per location, when Fatbeam completes its

installation of each Service. Upon the occurrence of the Service Activation Date, Fatbeam may commence billing and Customer shall be liable for payment for those Services installed. For sake of clarity, this means that some of the Services ordered under the same Service Order may commence billing prior to other Services in the same Service Order, thus resulting in Customer paying a proportionate share of the MRC quoted in the applicable Service Order.

- 9. Invoicing.** Fatbeam will provide Customer with a monthly itemized invoice, in advance, for the Services together with all other charges due. All amounts due are payable in full within thirty (30) days from date of invoice (“Due Date”). Invoice amounts not paid on or before the Due Date shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest lawful rate, whichever is lower. Unless otherwise stated in the Service Order, Fatbeam shall invoice Customer for any NRC upon the Service Activation Date of the applicable Service Order.
- 10. Invoice Disputes.** To the extent that Customer disputes any portion of an invoice, Customer shall notify Fatbeam in writing and provide detailed documentation supporting its dispute within one hundred and eighty (180) days of the invoice date or the Customer’s right to any billing adjustment shall be waived. In the event of a billing dispute, Customer shall timely pay all undisputed amounts. If the dispute is resolved against Customer, Customer shall pay such amounts due plus interest at one and one-half percent (1.5%) from the original Due Date for the payment.
- 11. Credit Application.** Fatbeam may, from time to time, conduct a review of Customer’s credit rating and payment history. Fatbeam may require Customer to pay a deposit if a credit check is unsatisfactory at any time, or if Customer fails to make timely payment two (2) or more times during any twelve (12) consecutive month period. When Customer establishes acceptable credit history or upon termination of the applicable Service Order, Fatbeam will return the balance of the deposit, less any amount for payments that Customer still owes to Fatbeam, to Customer along with interest as required by law.
- 12. Relocation.** If Fatbeam receives notice to relocate the fiber used to deliver Customer’s Service(s), Fatbeam will promptly provide notice to Customer and work in good faith with Customer to limit the impact. Fatbeam will ensure that any new fiber path meets the Fiber Specifications. The cost of any relocation will be paid by Fatbeam.
- 13. Routine Maintenance.** At no additional charge, Fatbeam will maintain its facilities and equipment to ensure it adheres to the Fiber Specifications (“Routine Maintenance”). If, however, maintenance or repair of Fatbeam’s network is caused by or a result of Customer’s improper use or operation of Customer’s facilities, Fatbeam may charge Customer for such repair or maintenance. Fatbeam will provide Customer with notice of Routine Maintenance and schedule all Routine Maintenance to occur between the hours of 0000 and 0600 local time, unless the Parties agree to a different time.
- 14. Non-Routine Maintenance.** In the case of a fiber cut, or any other event which causes complete loss of use of Customer’s Service(s), Fatbeam will use commercially reasonable efforts to: (a) respond to the reported outage within two (2) hours after the time of notification by Customer, and (b) repair the outage within ten (10) hours.
- 15. Taxes and Fees.** Every charge quoted for the use of Fatbeam’s Services, are exclusive of any applicable taxes, surcharges, or other fees imposed or governed by federal, state, local or regulatory agencies (“Taxes”). All such Taxes will be clearly delineated in Customer’s invoice.

In the event Customer is exempt from any or all Taxes, Customer shall provide Fatbeam with timely proof of such exemption.

- 16. Customer Default.** Customer is in default of the Agreement if Customer: (a) fails to cure any monetary breach within ten (10) days of receiving notice of the breach from Fatbeam; (b) becomes insolvent; or (c) fails to cure any non-monetary breach within thirty (30) days of receiving notice of the breach from Fatbeam. In the event of such a default, Fatbeam may elect, in its sole discretion, to: (i) immediately suspend or terminate the Services and impacted Service Order(s) without liability for any violation of the Agreement; or (ii) cure the non-monetary breach at Customer's sole expense. These remedies are in addition to and not a substitute for all other remedies contained in the Agreement or available to Fatbeam at law or in equity.
- 17. Fatbeam Default.** Fatbeam is in default of the Agreement if Fatbeam fails to cure any breach of any material term of such Agreement within thirty (30) days of receiving written notice of the breach from Customer. If Fatbeam fails to cure such default, Customer may terminate the impacted Service(s) without payment of the Early Termination Charge (as defined in the MSA), but Customer shall not be relieved of any of its obligations to pay all charges incurred prior to such termination
- 18. Special Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, COST OF SUBSTITUTE PERFORMANCE, INCURRED OR SUFFERED BY EITHER PARTY, WHATSOEVER, ARISING OUT OF, OR IN CONNECTION WITH, THE SERVICE(S), THE AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL THEORY, REGARDLESS OF THE FORESEEABILITY THEREOF EVEN IF THE PARTY HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- 19. Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, FATBEAM MAKES NO WARRANTY, EXPRESS, IMPLIED, WITH RESPECT TO THE DELIVERY OR PERFORMANCE OF ANY SERVICE, FATBEAM'S NETWORK, OR ANY WORK TO BE PERFORMED UNDER THE AGREEMENT, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, SATISFACTORY QUALITY OR NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE, STATUTORY, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED. FATBEAM ALSO SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SERVICE OR ANY EQUIPMENT WILL BE ERROR FREE, SECURE OR UNINTERRUPTED EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW. THE WARRANTIES SET FORTH IN THE AGREEMENT CONSTITUTE THE ONLY WARRANTIES MADE BY FATBEAM TO CUSTOMER WITH RESPECT TO THE SERVICE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES.
- 20. Service Outage.** Service Outage shall mean a complete interruption, severe degradation, or failure of communication on the Customer's Service between Demarcation Points, not caused by Force Majeure (defined below), Routine Maintenance, or Customer's acts, omissions, or Customer's Equipment. The duration of a Service Outage is measured from the time the interruption is reported to or detected by Fatbeam, whichever occurs first, and terminates at the time the Service(s) can pass traffic. If Customer requests that Fatbeam assist Customer in

investigating any Service Outage and Fatbeam determines that the Service Outage was not a result of Fatbeam's network or facilities, Fatbeam may invoice Customer for an additional charge for on-site Customer assistance at Fatbeam's then-current rates.

- 21. Service Outage Credits.** FATBEAM MAKES NO GUARANTEE THAT ANY SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED. As such, Customer's sole and exclusive remedy for any Service Outage shall be the "Service Outage Credits" provided in the applicable exhibit attached to and incorporated in the MSA. The Service Outage Credits outlined in the MSA are not compounding, Customer may not claim more than one credit for an impacted Service, and in no event, will the Service Outage Credit(s) in any one (1) month exceed 100% of the MRC for such Service. To receive Service Outage Credits, Customer must be in good standing with Fatbeam, current in all its obligations, and notify Fatbeam that it is exercising its right to receive a Service Outage Credit within sixty (60) days of the Service Outage.
- 22. Use.** Customer shall be solely responsible for all the security and confidentiality of information it transmits using a Service. Fatbeam exercises no control over, and accepts no responsibility for, the content of the information passing through its network, or Customer's equipment, and use of any such Service is at Customer's own risk. Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Customer. It is the Customer's obligation to take all measures to ensure against such occurrences. Customer shall be solely responsible for its improper use of the Service and/or Customer's end-users' or third parties' improper use of the Service, resale, or sharing of the Service in violation of any applicable law or in violation of any provision of the Agreement. Customer does not have the right to maintain, repair, relocate, splice or touch Fatbeam's Fiber, and Customer will be solely liable for any loss or damage suffered by Fatbeam due to Customer's actions. Fatbeam is not responsible for and will not make any changes or submit updates to 911/E-911 databases for any Services; Customer will be responsible for providing all 911/E-911 functionality as required by applicable law.
- 23. Confidentiality.** Each Party shall use the highest degree of care in safeguarding the other's confidential information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality. Customer Proprietary Network Information ("CPNI") shall only be disclosed, by Fatbeam, in accordance with applicable federal, state, or local laws, regulations, rulings, orders or other actions of governmental agencies. Fatbeam may work with a third party or third parties to deliver Customer's Service(s), at which time it may become necessary to disclose Customer's CPNI. Fatbeam is committed to protecting Customer's CPNI and does not sell or allow any third party to use Customer's CPNI for marketing purposes. If Customer would like to discuss its CPNI or change its CPNI election, please contact us at info@Fatbeam.com.
- 24. Force Majeure.** Neither Party shall be responsible for any failure of performance due to causes beyond its reasonable control including, but not limited to, acts of third parties not under the direction or actual control of the Party delayed or unable to perform, acts of God, or other similar catastrophe, any law, order, regulation, direction, action or request of the government, or any department, agency, commission, court, or bureau of a government, or any civil or military authority, national emergency, insurrection, terrorist act, riot, war, strike, lockout, or work stoppage. The Party claiming relief due to such occurrence shall provide notice to the other Party.

- 25. Subject to Laws.** The Agreement is subject to all applicable federal, state and local laws, and regulations, rulings and orders of governmental agencies, and the obtaining and continuance of any required approvals, authorizations, or tariffs or price lists filed with the FCC or any other governmental agency. The Parties will comply with such in performing all obligations under the Agreement, specifically including, but not limited to, the rules governing 911/E-911 and any other emergency services.
- 26. Prevailing Party.** If suit is brought, by either Party, to enforce the Agreement, the prevailing Party shall be entitled to recover, in addition to any other remedy, the reimbursement of reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred.
- 27. Relationship of Parties.** This Agreement does not create a partnership, joint venture or agency relationship between Fatbeam and Customer. Neither Party shall have any authority to bind the other Party to any agreement, understanding or other instrument, in any manner whatsoever.
- 28. Assignment.** Customer may not assign, encumber or otherwise transfer this Agreement to any other person without the prior written consent of Fatbeam. This includes, but is not limited to, any transaction or series of related transactions (including any reorganization, merger or consolidation) that results in the transfer of fifty percent (50%) or more of the outstanding voting power of Customer, or a sale of all or substantially all of the assets of Customer to another person or entity.
- 29. Insurance.** During the Service Term, each Party shall obtain and maintain not less than the insurance coverage as required by statute or as standard within the Party's industry. Such insurance coverage will not limit the liability of either Party.