

509-344-1008 | www.fatbeam.com



March 14, 2023

Prepared for Coeur d' Alene Charter Academy

Service Address: 4904 N Duncan Dr, Coeur d'Alene, ID 83815



2065 W. Riverstone Dr. Suite 105
Coeur d'Alene, ID 83814
T (509) 344-1008
F (509) 344-1009
www.fatbeam.com

Service Order

This Service Order #1 ("Service Order") is for the installation and utilization of high-speed, high capacity, gigabit fiber optic Internet service, as more fully described below, pursuant to the terms and conditions of the Terms, and Master Service Agreement entered into by and between Fatbeam, LLC ("Fatbeam") and Coeur d'Alene Charter Academy ("Customer") on March 15, 2023 ("Agreement"), and is effective as of March 15, 2023 ("Effective Date"). Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

Service: Fatbeam grants Customer a license to Fatbeam's high-speed, high capacity, 1G fiber optic Internet service.

Billing address:
4904 N Duncan Dr
Coeur d'Alene, ID 83815

Service Address:
4904 N Duncan Dr
Coeur d'Alene, ID 83815

NRC: (One-time fee for installation)\$0.00

MRC: (Reoccurring monthly fee exclusive of Taxes) \$825.00

Service Term: 60 months.

Estimated due date: July 1, 2023

Renewal Options: Provided that the district is not in breach of the agreement, the district has the option of (2) additional 5yr extensions. The customer will notify Fatbeam in writing, of their intent to renew at least 30 days prior to the expiration of the Service Term. The renewal will be finalized by an amendment to this original contract

Customer Responsibility: It is Customer's responsibility to ensure all the work on its side of the Demarcation Points is completed prior to the desired due date. This includes, but is not limited to Customer securing its own rights and related costs to access, occupy, and conduct typical telecommunication operations, which may include the need to secure construction permits and underlying rights, access agreements, access fees, lateral fees, riser fees, cross-connects, coordination at any third party owned location, and, where applicable, necessary space for Fatbeam's fiber termination panel.

Ratification: This Service Order is requested by Customer and accurately describes the Service(s) being order and the terms and conditions which govern the Service Order. Except as specifically set forth in this Service Order, the Agreement is hereby ratified and affirmed in all respects and all other terms, covenants, and conditions of the Agreement shall remain unchanged and shall continue in full force and effect. In case of an inconsistency or conflict between this Service Order and the Agreement, this Service Order shall govern. All Exhibits are attached hereto and are incorporated herein by reference and made a part of this Service Order.

IN WITNESS WHEREOF, the Parties have executed this document as of the date and year first above written.

Fatbeam, LLC

DocuSigned by:
Graham Taylor
F19B63D9E9724FE
Name: Graham Taylor

Title: Director of Public Sector

Date: 3/18/2023 | 08:28 PDT

Coeur d' Alene Charter Academy

By: Angela Durick
Name: ANGELA DURICK

Title: BUSINESS MANAGER

Date: 3/16/23

Master Service Agreement

This Master Service Agreement (“**MSA**”) is made effective as of March 15, 2023 (“**Effective Date**”) by and between Fatbeam, LLC, a Washington limited liability company, with its principal offices located at 2065 W. Riverstone Drive, Suite 202, Coeur d’Alene, ID 83814 (“**Fatbeam**”) and Coeur d’Alene Charter Academy, a charter school in the state of ID, with an address of 4904 N Duncan Dr, Coeur d’Alene, ID 83815 (“**Customer**”). Each may be referred to herein as a “**Party**” and collectively as the “**Parties**.” This MSA includes and incorporates herein Service Order(s) (defined below), Fatbeam’s Acceptable Use Policy (found on Fatbeam’s website, www.fatbeam.com), and any forms or authorizations executed by the Parties associated with this MSA (collectively referred to as the “**Agreement**”). This MSA will survive for as long as there are working Service(s) (defined below) associated with it.

- 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) this MSA; and (c) the Request for Proposal (“**RFP**”) provided by the Customer.
- 2. Services.** “**Service(s)**” mean those certain communications services, rights of use and/or associated space ordered by Customer from time to time under a Service Order pursuant to this Agreement. Service Order(s) further describe the Service(s) purchased by Customer and set forth any additional terms and conditions for such.
- 3. Service Orders.** Customer may, from time to time, request Fatbeam provide it with Service(s) 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). 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). Unlike most contracts, the Service Order is not binding on the Customer until the Customer receives E-rate funding approval and provides Fatbeam with written approval to proceed with construction, provisioning, and/or providing the Service(s) (“**Notice to Proceed**”). Customer understands and agrees that the MRC and NRC, if applicable, are Customer’s firm contractual obligation for the duration of the Service Term once the Notice to Proceed has been executed. For the avoidance of doubt, Customer’s financial responsibility under the Service Order begins once either: i) Customer receives E-rate funding approval; or ii) Customer signs the Notice to Proceed. Once either event occurs, Customer may not terminate the applicable Service Order without owing Fatbeam 100% of the MRC and NRC delineated in such Service Order, except as otherwise provided in Section 14 and Section 21.
- 4. Term.** This MSA shall be in effect until the termination or expiration of the last active Service Order.
- 5. Service Term.** The Service(s) ordered in a Service Order may be installed and delivered to Customer on different dates. The Service Term, stated in each Service Order, will commence once all Service(s) ordered under such are delivered to the Demarcation Point (defined below). Upon the expiration of the Service Term, Customer may have the option to extend the Service Term as provided in the Service Order.
- 6. Installation of Service(s).** 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.

- 7. 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.
- 8. Billing Commencement.** Fatbeam reserves the right to substitute, change or rearrange any equipment or facilities used in delivering Service(s) that does not affect the quality, cost or type of Service(s) contracted for. The "**Service Activation Date**" is the date Fatbeam delivers the 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. Multiple Locations.** In the event a Service Order contains multiple different Service addresses (location) or multiple points of demarcation, whether at the same address or multiple addresses, once Fatbeam has provided connectivity between any two (2) Demarcation Points, Fatbeam shall commence billing upon each segment based on its Service Activation Date. Each Service and Service address (location/segment) under the same Service Order shall have the same commencement and expiration of the Service Term, unless otherwise provided in the Service Order. Additionally, Fatbeam may allow Customer to add a new Service address (location) to an existing Service Order under the same terms and conditions present in such Service Order. For the avoidance of doubt, such addition would allow Customer to have all its Services at multiple locations on the same Service Term, but different billing commencement dates.
- 10. 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. Fatbeam reserves the right to increase the MRC annually by a percentage equal to the percentage change in the Consumer Price Index (CPI) statistics published by the United States of Bureau of Labor. Unless otherwise stated in the Service Order, Fatbeam shall invoice Customer for any NRC upon the Service Activation Date of the applicable Service Order.
- 11. 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 ninety (90) 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.

- 12. Taxes and Fees.** Every charge quoted for the use of Fatbeam's Service(s), 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 on Customer's invoice. In the event Customer is exempt from any or all Taxes, Customer shall provide Fatbeam with timely proof of such exemption. Fatbeam will provide Customer with an estimate of its tax liability on each applicable Service Order. It is Customer's responsibility to verify its tax liability and add such to its E-Rate filings; Customer's failure to do so will not reduce Customer's obligation to reimburse Fatbeam for such assessment.
- 13. 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; (c) accesses, interferes with, or tampers with Fatbeam's Fiber; or (d) 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. If Service(s) are terminated due to Customer's uncured default, then commencing on the effective date of such termination, Customer will be subject to an early termination fee equal to one hundred percent (100%) of the remaining value of the applicable Service Order(s) ("**Early Termination Charge**"). 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.
- 14. 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, but Customer shall not be relieved of any of its obligations to pay all charges incurred prior to such termination
- 15. 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.
- 16. Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, FATBEAM MAKES NO WARRANTY, EXPRESSED OR 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.

- 17. 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. Furthermore, unless specifically stated in Customer's Service Order, no Service offered by Fatbeam includes back-up power to Fatbeam's equipment located at or near the Demarcation Point(s).
- 18. Cancellation for Denial of E-Rate Funding.** Customer represents it is a public entity and that the Services provided under this MSA are subject to public funding sources, including E-Rate funding. Customer shall seek funding through E-Rate for some or all of the Services purchased under this MSA. In the event that Customer's good faith application for E-Rate funding to purchase Services is either: (a) denied in its entirety by the Universal Service Administrative Company ("**USAC**"), for any reason, other than Customer's failure to follow the USAC's filing requirements ("**Customer's Filing Negligence**") or (b) partially granted and Customer is unable to make up the difference with its own funding, then the Parties agree to enter into good faith negotiations to amend the applicable Service Order(s) to allow for Customer's purchase of less Services. Notwithstanding the foregoing, Customer expressly acknowledges and agrees that Fatbeam shall not be obligated to perform any work or to incur any costs to provide the Services to Customer prior to USAC approval of Customer's E-Rate funding and Customer agrees to reimburse Fatbeam for any such costs incurred by Fatbeam for any work related to a cancelled Service Order(s) for E-Rate Services prior to the date of Customer's cancellation.
- 19. Termination for Non-Appropriation of Funds.** Customer represents and warrants that, subject to USAC approval of Customer's application for E-Rate funding, all other necessary funds have been appropriated to satisfy the Customer's obligations for the underlying Service(s) through the first anniversary of the Service Activation Date for the applicable Service Order (the "**1st Anniversary**"). If, for any year of the term following the 1st Anniversary: (a) no funds are appropriated for any of the Customer's communications facilities, services or technologies for any of the locations listed in any applicable Service Order, (b) the Customer has no alternative but to discontinue all Service to such locations for that funding year, and (c) Fatbeam has received prior written notice from Customer confirming the occurrence of items (a) and (b) of this Section (the "**Non-Appropriation Notice**"), then, on the following terms, Customer, may terminate the affected Service Order(s). The "**Effective Date of Termination**" for this Service Order shall be the later of (a) the 1st Anniversary; (b) the first day of the funding year for which no funds are appropriated for any of the Customer's Services for any of the locations listed in the affected Service Order; or (c) thirty (30) days from the date the Non-Appropriation Notice is received by Fatbeam. In the event of such a termination, the Parties agree that Customer shall pay for all Services rendered under the affected Service Order(s) through the Effective Date of Termination; but Customer

shall not incur any further termination liability of any sort for such termination. Customer agrees to act in good faith in invoking its right to terminate all or a portion of any Service, and upon exercising such right, Customer will not place an order for the same or comparable service with another supplier within twelve (12) months of the Non-Appropriation Notice.

- 20. Non-Appropriation of Funds due to Customer's Filing Negligence.** In the event Customer loses or is no longer granted E-Rate funding due to Customer's Filing Negligence or failure to adhere to the terms and conditions necessary to receive E-Rate funding, Customer's right to terminate, without liability, will be revoked and Customer will owe the full MRC for the duration Customer lost funding.
- 21. 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.
- 22. 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 failure to perform due to a force majeure event, shall provide notice of such to the other Party.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. Assignment.** Customer may assign this Agreement upon written notice: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an affiliate. Except as specifically provided in the preceding sentence, Customer may not assign, encumber or otherwise transfer this Agreement to any other person without the prior written consent of Fatbeam.

27. 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.

28. Limitation of Liability. FATBEAM’S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES AND/OR THIS AGREEMENT, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO FATBEAM DURING THE MONTH OF THE OCCURANCE OF ANY CLAIM.

29. Customer Indemnification. Customer will indemnify, hold harmless, and defend Fatbeam, its affiliates, officers, directors, parent companies, employees, agents and subcontractors from liabilities, claims or damages and expenses whatsoever (including reasonable attorneys’ fees) arising out of or in connection with Customer’s use and/or Customer’s end-users’ use or sharing of the Services. Customer’s indemnification obligations do not apply to claims for damages to real or tangible personal property or for bodily injury or death if solely caused by Fatbeam’s gross negligence or willful misconduct.

30. Fatbeam Indemnification. Fatbeam will indemnify, hold harmless, and defend Customer and its affiliates, and their respective officers, directors, employees, agents and subcontractors from liabilities, claims or damages and expenses whatsoever (including reasonable attorneys’ fees) arising out of or in connection with: (a) any liens placed on Customer’s equipment due to Fatbeam’s action or inaction, (b) claims by third parties for damage to real or tangible personal property or for bodily injury or death which is caused by Fatbeam and is directly due to Fatbeam’s negligence or willful misconduct or which is solely caused by hazards created by Fatbeam’s equipment or facilities, and (c) claims that the Services infringe a third party’s intellectual property or proprietary rights, violate applicable law or are in violation of any provision of the Agreement. Fatbeam’s indemnification obligations do not apply to claims for damages to real or tangible personal property or for bodily injury or death if solely caused by Customer’s gross negligence or willful misconduct.

31. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws for the state where the Service(s) are to be provided.

32. Notices. All notices to Customer under the Agreement shall be in writing and will be made by one or more of the following methods: bill message or insert incorporated in or with the Customer’s invoice by its normal means of transmission, first class mail, certified mail, or overnight delivery. In the case of a notice to Fatbeam, all notices will be in writing and will be made by personal delivery, overnight delivery, or certified mail. Notices will be sent to the addresses below, and such notice shall be effective on the date of receipt, or refusal of delivery, by the receiving Party.

If to Fatbeam:	If to Customer:
Fatbeam, LLC	Coeur d’Alene Charter Academy
Attn: CEO	Attn: Gayle Fleming <i>Angela Durick</i>
2065 W. Riverstone Dr., Suite 202	4904 N Duncan Dr
Coeur d’Alene, ID 83814	Coeur d’Alene, ID 83815
With a copy to (not official notice): legal@fatbeam.com	

33. Addition/Modification. This Agreement and all attachments may only be modified, amended or waived through an amendment signed by an authorized employee of each Party.

34. Counterparts/Facsimile Signatures. This MSA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MSA and any Service Order(s) may be executed via a recognized electronic signature service (e.g., Docusign) or may be delivered by facsimile transmission, or may be signed, scanned and emailed to Fatbeam, and any such signatures shall be treated as original signatures for all applicable purposes. The representative signing this MSA on behalf of Customer warrants that he/she has the legal right and ability to enter into the Agreement and is authorized to act on behalf of the Customer.

35. Severability. In the event that any provision of this MSA shall be held unenforceable or invalid by a court of competent jurisdiction, the provisions not affected by said decision shall remain in full force and effect. In the event that any provision of the Contract shall be held unenforceable or invalid by a court of competent jurisdiction, the provisions not affected by said decision shall remain in full force and effect.

Each of the undersigned hereby state that he/she has full authority to enter into this MSA, has read and agrees to the Terms and hereby accepts these agreements on behalf of the companies identified below as of the Effective Date provided above.

FATBEAM, LLC

DocuSigned by:
Signature: *Graham Taylor*
Name: *Graham Taylor*
Title: Director of Public Sector
Date: 3/18/2023 | 08:28 PDT

Coeur d'Alene Charter Academy

Signature: *Angela Durick*
Name: *ANGELA DURICK*
Title: *BUSINESS MANAGER*
Date: *3/16/23*

Exhibit A

Ethernet, Internet, Cloudbeam, Lit Fiber, and Wavelength Services

This Exhibit A provides the specifications for Ethernet, Internet, Cloudbeam, Lit Fiber, and Wavelength Service(s) ordered by Customer in a Service Order. Each Service will be provided to Customer at a specified Demarcation Point for which the bandwidth ordered will be guaranteed by Fatbeam up to such point. Fatbeam is not responsible for, nor can it guarantee, the bandwidth speed beyond the Demarcation Point.

- 1. Ethernet Service.** Fatbeam provides Ethernet Services, all of which meet the Metro Ethernet Forum (“MEF”) specifications for the particular configuration and are transport based services. The Service Order containing the Ethernet Service(s) will delineate the Demarcation Point(s) and the bandwidth.
- 2. Dedicated Internet (“DIA”) Service.** Fatbeam provides fiber-based Internet connection with no data caps, bursting fees, local loop charges, nor port costs. The Service Order containing the Internet Service(s) will delineate the Demarcation Point(s) and the bandwidth.
- 3. Cloudbeam Service.** Cloudbeam is a Service which Customer may elect to add-on to its DIA Service provided by Fatbeam. “Cloudbeam” is a point-to-point transport circuit that traverses from the Demarcation Point located at Customer’s premises to that certain Demarcation Point (delineated in the Service Order) within the data center selected by Customer. The bandwidth of Cloudbeam will be deducted from Customer’s DIA Service as specifically provided in the Service Order. Cloudbeam, does not include: i) cloud service; ii) a cross-connect from the Demarcation Point within the data center to Customer’s cloud service provider; nor iii) assistance with any configuration of or to the cloud service(s). For clarity, Cloudbeam is a Service that allows Customer to deduct a certain amount of bandwidth from its DIA Service to be used to connect Customer to the data center where Customer’s cloud provider has a server. The Service Term for the Cloudbeam Service is coterminous with Customer’s associated DIA Service. FATBEAM IS NOT LIABLE FOR ANY OUTAGE, DEGRADATION, ERROR, TROUBLE, OR FAILURE OF CUSTOMER’S CLOUD SERVICE.
- 4. Lit Fiber Service.** Fatbeam provides bandwidth starting at 1 Gigabit. The Service Order containing the Lit Fiber Service(s) will delineate the Demarcation Points and the bandwidth.
- 5. Wavelength Service.** Fatbeam provides bandwidth starting at 10 Gigabit via Dense Wavelength Division Multiplexing (DWDM) technology, which provides an easy upgrade to wavelength speeds in excess of 10 Gigabit.

Exhibit B

Service Level Agreement

This Exhibit B provides the specific service level guarantees Fatbeam will provide for its DIA, Lit Fiber, and Wavelength Services and remedy or damages available to Customer in the event Fatbeam were to fail to meet these objectives due to a Service Outage (“SLA”).

- 1. Fatbeam’s Network.** “Fatbeam’s Network” is defined as Fatbeam’s side of the Demarcation Point for which Fatbeam is responsible for maintaining, repairing and operating. Customer’s access port (the port on the Fatbeam aggregation router upon which the Customer’s circuit terminates) is considered the Customer’s Demarcation Point.
- 2. 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.
- 3. 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 thirty (30) days of the Service Outage.
- 4. Network Availability Guarantee – 99.99%.** Fatbeam’s Network is guaranteed to be available and capable of forwarding packets 99.99% of the time, as averaged over a calendar month (“Network Availability Guarantee”). If the Network Availability Guarantee is not met in a calendar month, Customer will receive a Service Outage Credit equal to 1/30th of the MRC of the impacted month for each full hour of a Service Outage in excess of the Network Availability Guarantee.
- 5. Latency Guarantee – 55 milliseconds (ms).** Latency is the one-way delay of packets from the source to the destination, occurring in Fatbeam’s Network. Fatbeam’s Network is guaranteed to have an average round trip packet transit time within its network of an averaged maximum of 55ms over a calendar month (“Latency Guarantee”). If the Latency Guarantee is not met in a calendar month, Customer will receive a Service Outage Credit equal to 1/30th of the MRC of the impacted month for each full 1ms above the 55ms average maximum guarantee.
- 6. Packet Loss – Less than 1%.** Packet Loss is the percentage of packets that were not sent nor received successfully from the source to the destination, occurring in Fatbeam’s Network. Fatbeam’s Network is guaranteed to have a maximum average packet loss of less than 1% as averaged over a calendar month

(**“Packet Loss Guarantee”**). The packet loss is measured as the average of 15-minute samples across Fatbeam’s Network taken throughout the calendar month. If the Packet Loss Guarantee is not met in a calendar month, Customer will receive a Service Outage Credit equal to 1/30th of the MRC of the impacted month for each full 1% above the Packet Loss Guarantee.

7. **Network Jitter Guarantee – 2 milliseconds (ms)**. Jitter is the variation in the Latency on a packet flow between two systems, when some packets take longer to travel from one system to the other. Fatbeam’s Network is guaranteed not to exceed an average jitter delay of 2ms as averaged over a calendar month (**“Network Jitter Guarantee”**). If Network Jitter Guarantee is not met in a calendar month, Customer will receive a Service Outage Credit equal to 1/30th of the MRC of the impacted month for each full millisecond (1ms) exceeding the 2ms average.
8. **Fatbeam Provided Customer Premise Equipment**. Fatbeam may provide equipment at the Customer premise to terminate Service delivered over Fatbeam’s Network. It is Customer’s responsibility to provide adequate space, power, temperature, and humidity controls for the operation of this equipment.
9. **Chronic Service Outage**. A **“Chronic Service Outage”** will be deemed to have occurred only if Customer experiences four (4) or more related Service Outages resulting in loss of Service for at least one (1) hour each within any calendar month period and only when the Service Outage is not the result of (i) the fault or negligence of Customer; (ii) the failure of interconnecting facilities or other equipment not part of the Service or facilities or not within Fatbeam’s or its supplier’s reasonable control; (iii) Routine Maintenance; and/or (iv) DoS attack or DDoS attack. In the event that there is a Chronic Service Outage, Customer may upon written notice to Fatbeam, immediately terminate the affected on-net Services only if (i) Customer notifies in writing Fatbeam through Fatbeam’s NOC trouble ticket system; and (ii) Customer provides written notice with respect to such termination to Fatbeam within thirty (30) days following the eligible Service Outage entitling Customer to terminate in accordance with this Section. In case of such termination, Customer will not be liable for any Early Termination Charge, but will be responsible for all amounts due up to the date of termination. For off-net services, Fatbeam will have thirty (30) days following receipt of Customer’s written notification of the Chronic Service Outage through Fatbeam’s NOC trouble ticket system to evaluate and implement resolution (**“Cure Period”**). If Fatbeam is unable to resolve the Chronic Service Outage within the Cure Period, Early Termination Charge shall have the right to terminate the affected Service if Customer provides written notice with respect to such termination to Fatbeam within thirty (30) days following the Cure Period. In case of such termination, Customer will not be liable for any Early Termination Charge, but will be responsible for all amounts due up to the date of termination. Fatbeam shall obtain and pass-through any cancellation rights to which it is entitled from its underlying vendor for any off-net Chronic Service Outage.

Exhibit C

Dark Fiber Lease

This Exhibit C provides the specifications for Dark Fiber ordered as a short-term Lease (defined below) in a Service Order and is attached to and incorporated into the MSA and applicable Service Order.

1. **Dark Fiber Lease.** As of the Service Activation Date (defined below), Fatbeam will grant Customer a license to use the number of fiber optic strands of the cable ("**Dark Fibers**") and associated facilities and underlying rights for the duration of the Service Term, as further delineated in the Service Order, ("**Dark Fiber Lease**"). Upon the expiration or termination of the Dark Fiber Lease, all rights granted to Customer will cease and revert to Fatbeam.
2. **Service Activation Date.** Fatbeam will provide Customer with advance notice of the date and time that Fatbeam will be onsite testing the Dark Fibers, in accordance with the Fiber Specifications, providing Customer the opportunity to have personnel present to observe. Once Fatbeam has determined that the Dark Fibers meet the Fiber Specifications, Fatbeam will provide Customer with a completion notice and Customer will have five (5) business days to accept or reject delivery. If Customer rejects delivery, Customer must provide a written detailed account of the defect or failure detected and the Parties will work together in good faith to prove the Fiber Specifications are met. The "**Service Activation Date**" for Dark Fiber Services, is the date Customer provides written acceptance of the Dark Fibers or if Customer fails to provide acceptance or rejection, the Service Activation Date shall be the expiry of five (5) business days after Fatbeam delivers notice of completion. The Service Activation Date is specific to each pair of Dark Fiber. Customer shall be responsible for the timely designation of its space and power requirements and completion of any work or installation required for it to place the Dark Fibers into operation (and Customer's failure to designate its space and power requirements or complete such work shall not be grounds for rejection of the Dark Fibers).
3. **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, 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).
4. **Fiber Specifications.** Prior to the Service Activation Date 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 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices); and (ii) at 1550nm: (0.30 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices) ("**Fiber Specifications**").

5. **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.
6. **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.
7. **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.
8. **Service Outage Credits.** If Customer's Dark Fibers experience a Service Outage lasting more than twelve (12) hours, Fatbeam will provide a Service Outage Credit in the amount of ten percent (10%) of the daily charge (MRC/30) for the affected Dark Fibers for each hour in excess of twelve (12) hours, not to exceed 100% of the daily charge in any calendar month.
9. **Resell.** In no event whatsoever shall Customer directly or indirectly transfer, sell, assign, condo, swap, exchange, lease, sublease, license, sublicense, resell or grant indefeasible or other rights of use in or to all or any part of the Dark Fibers or Customer's interest therein, or enter into any other arrangement with any entity for such entity's use of all or any part of the Dark Fibers. Customer agrees and acknowledges that it has no right to use any of the conduit, manholes, handholes, or other equipment or facilities that may be attached to or used for Fatbeam's delivery of the Dark Fibers. Customer shall keep any and all of Fatbeam's Network free from any liens, rights or claims of any third-party attributable to Customer. Any transfer, assignment or other action in violation of this Section shall constitute a material breach of this Agreement and shall, in addition to any other remedies available to it, entitle Fatbeam to terminate this Agreement without any liability to Customer. Nothing in this Section prohibits Customers ability to light the Dark Fibers to provide service(s) to its users or customers.