

DQE COMMUNICATIONS LLC

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GENERAL TERMS & CONDITIONS

1. SERVICES.

- A. Customer Service Orders.** Customer must execute a separate customer service order (“Customer Service Order”) detailing the Services to be provided on a template form provided by DQE, as may be modified from time to time. Customer Service Orders shall clearly set forth the term, pricing, service type, service location(s), monthly recurring charge (“MRC”), non-recurring charge (“NRC”), early termination charge, and any additional specific terms for the Services. All Customer Service Orders shall be subject to availability and acceptance by DQE. Certain Services may be governed by DQE's tariff, which is filed with and approved by the appropriate Public Utility Commission.
- B. Service Schedules.** The additional terms and conditions that apply to each type of Service being provided by DQE are set forth in service schedules (each a “Service Schedule”) which are incorporated by reference into each Customer Service Order as applicable.
- C. Restriction on Services.** Customer agrees that it shall not sell, resell or sublease the Services in whole or in part, and that it (and others with access through Customer to the Services) will abide by all laws and by DQE's Acceptable Use Policy. Use of Services in violation of the Acceptable Use Policy or applicable laws shall constitute a material default by Customer. Customer must take reasonable steps to ensure others do not gain unauthorized access to the Service.

2. TERM AND TERMINATION.

- A. Customer Service Order Term.** Unless otherwise agreed to by the Parties, each Customer Service Order shall automatically renew for successive twelve (12) month terms unless either Party gives notice to the other of its intent not to renew at least ninety (90) days prior to expiration of the then-current term. In the event Services are provided in any month-to-month holdover period following non-renewal by Customer and expiration of the Customer Service Order term, then Customer shall pay One Hundred Ten Percent (110%) of then-applicable Service Fees during the holdover period.
- B. Termination for Cause.** If either party defaults in the performance of any material provision of this Agreement or any Customer Service Order, then the non-defaulting party may give written notice to the defaulting party. If the default is not cured within ten (10) days (in the case of a monetary default) or thirty (30) days (in the case of a non-monetary default), or the Customer has failed to take reasonable steps to begin curing the default to the satisfaction of the non-defaulting party, the affected Customer Service Order(s) will be terminated. If all Customer Service Orders are terminated pursuant to this Section, the non-defaulting party may terminate this Agreement.
- C. Portability.** Customer may terminate an existing Service, and order a “Replacement Service” on the existing DQE network, without incurring early termination charges, provided that (i) the Replacement Service shall have a Term equal to or greater than the remaining Term of the existing Service, but in no event less than twelve (12) months; (ii)

the Replacement Service shall have an MRC equal to or greater than the MRC for the existing Service and (iii) Customer pays any applicable non-recurring charge associated with the Replacement Service as well as any other costs, expenses, fees, or charges DQE incurs in terminating the existing Service or any cross connects or related circuits ordered by DQE to provide the existing Service or in providing the Replacement Service, including without limitation a non-recurring charge, early termination or move fees, charges or penalties from third-party carriers. Customer must pay such documented costs in the form of a non-recurring charge that will appear on Customer's invoice for the Replacement Service. The Service Order for the Replaced Service (identifying the Service it is replacing) must be placed within thirty (30) days notification of termination of the Service.

- D. Abandonment.** DQE reserves the right to suspend or terminate any Service that has apparently been abandoned by Customer, if no response from Customer is received following notice pursuant to Section 12 of this Agreement.
- E. Effect of Termination.** If DQE terminates this Agreement and/or any affected Customer Service Order(s) as a result of any uncured default, or if Customer terminates this Agreement and/or affected Customer Service Order(s) other than pursuant to subsections A of this Section, Customer shall pay any past due balance, plus, all remaining monthly Service Fees due under the remaining term of the applicable Customer Service Order(s). Affected Customer Service Order(s) may be cancelled only upon thirty (30) days written notice to DQE. Upon termination of this Agreement or any Customer Service Order, DQE shall remove DQE Facilities within ninety (90) days of Customer's written request. Customer shall permit DQE access to remove such DQE Facilities.

3. PAYMENT AND CREDIT.

- A. Payment of Service Fees.** Customer agrees to pay the service fee set forth in each Customer Service Order (the "Service Fee"). Unless otherwise agreed to in writing, the Service Fee will accrue beginning on the Service Commencement Date and will be billed monthly in advance. If the Service Fee includes payment for multiple sites, the Service Fee will be pro-rated so that only the sites that had a Service Commencement Date initiated will be due until all sites have been installed. Any Installation Fee will be billed in the first invoice as a non-recurring item. Any necessary Modification Fee shall be billed as a non-recurring item as soon as possible after the necessary modification is implemented. Payments shall be made by check, payable to DQE or by electronic transfer as mutually agreed, and are due no more than thirty (30) days from invoice date. Interest will accrue on past-due and undisputed balances at one and a half percent (1.5%) per month until paid. DQE shall be entitled to recover its costs and expenses incurred in collecting any past due amounts owed hereunder, including reasonable attorneys' fees and costs.
- B. Taxes and Fees.** All charges listed on the Customer Service Orders are exclusive of, and Customer shall be responsible for and agrees to pay, any and all applicable federal, state, and local use, excise, sales, value added, consumption, gross receipts, access, franchise, and other taxes, fees, assessments, duties, and surcharges (including, without limitation, any universal service fund surcharge), in connection with the provision, sale, or use of the Services or facility furnished to Customer, (collectively, "Taxes") and which

DQE is allowed by law to collect from customer. Customer shall not be responsible for taxes on DQE's net income. Furthermore, Customer shall pay any costs or fees arising from or in connection with an order, rule or regulation of any federal, state or local government, agency or court in connection with the Services, or as otherwise required to recover amounts that DQE is required by government or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. It will be the responsibility of Customer to pay any such taxes and fees that subsequently become applicable retroactively. If Customer believes it is exempt from Taxes, Customer will provide DQE with a legally valid and duly executed exemption certificate and any other information with respect to such exemption as DQE may reasonably require. DQE will honor the tax exemption certificate from the date that DQE receives such certificate and additional information from Customer. If the tax or governmental authority rules that Customer's exemption is invalid, Customer will reimburse DQE for any Tax, surcharge, fee, or other liability, including, without limitation, any penalties and interest, arising from, or in connection with, the invalid claim of exemption.

- C. Payment Disputes.** If Customer disputes any portion of an invoice, then Customer must submit a written claim (including all relevant documentation) to DQE no later than sixty (60) days after the due date for the disputed charge. Failure of Customer to notify DQE of a dispute within one hundred and eighty (180) days shall constitute a waiver by Customer of any dispute and that invoice shall be considered correct and complete. The Parties shall negotiate in good faith to resolve any dispute and DQE shall credit all disputed charges resolved in Customer's favor retroactive to the date the disputed charges first appeared on Customer's invoice. For any disputes that are not resolved in favor of Customer, DQE shall provide a detailed explanation for the denial of Customer's claim along with any application calculation(s).
- D. Review of Customer Credit.** Upon request, Customer agrees to provide DQE with reasonable information to complete a credit review of Customer. Delivery of the Services is contingent upon DQE's determination, in its sole discretion, that Customer is creditworthy. DQE may, from time to time, conduct a review of Customer's credit rating and payment history. If, at any time during the term of this Agreement, DQE determines that Customer's credit is unsatisfactory, Customer has experienced any adverse change in its financial condition or Customer makes two or more late payments, DQE will have the right, but not the obligation, to require that Customer post security or make other credit arrangements satisfactory to DQE to ensure prompt payment by Customer of amounts owed or otherwise payable under this Agreement. Such security or credit arrangements may include, but are not limited to, an escrow agreement to provide a mechanism for timely payment, letter of credit, parental guaranty, or surety bond. Customer shall provide the requested security or credit arrangement within five (5) business days of DQE's request for same. If Customer does not provide such security within the five (5) business days, then DQE may terminate the Services.

4. EQUIPMENT/FACILITY INSTALLATIONS.

- A. DQE Facilities.** DQE may install certain facilities necessary for the provision of Services, including but not limited to cable, wiring, conduit, racks, telecommunications equipment, electronic equipment, and any associated hardware ("DQE Facilities"). Customer shall be responsible for the costs of installation of DQE Facilities and any Customer Equipment (as defined below) necessary to provide the Services set forth in a Customer Service

Order (a portion of which may be recovered via an "Installation Fee"), and for providing space, power and cooling as required and specified by DQE for the Services ordered. DQE Facilities shall remain the property of DQE and all rights, title and interest in any DQE Facilities shall at all times remain exclusively with DQE. Customer will notify DQE of any damage or threatened damage to DQE Facilities promptly upon becoming aware of any damage. Customer shall not, nor permit others to, relocate, repair, or otherwise access the DQE Facilities without DQE's prior written consent.

- B. Customer Equipment.** Customer is responsible, at its sole cost and expense, for connecting to the interface point where DQE transfers the service to Customer (the "Hand Off Point") as specified in the Customer Service Order. Equipment and service beyond the Hand Off Point and/or interconnection between DQE Facilities and terminal equipment and wiring at the Hand Off Point shall be the responsibility of Customer ("Customer Equipment"). Customer is responsible for procuring and maintaining Customer Equipment technically compatible with the Service and DQE's network. DQE shall have no obligation to test, install, maintain or repair any non-DQE Facilities, including any Customer Equipment. If a service deficiency or failure is determined to be caused by the failure, malfunction or inadequacy of Customer Equipment, Customer shall compensate DQE for actual time and materials expended during any related service call.
- C. Access and Customer Premises Obligations.** For any Customer controlled locations, Customer hereby grants DQE access for installation, repair and/or maintenance and unless otherwise agreed upon, Customer shall provide licenses, permits or rights of way reasonably acceptable to DQE in order to perform the Services. For locations not controlled by Customer, Customer shall assist DQE in obtaining any licenses, permits or rights way necessary for the installation, repair and/or maintenance of DQE Facilities. If access to the property is under the control of a third party, providing Services under a Customer Service Order shall be expressly contingent upon DQE's ability to secure on reasonable terms a right-of-entry onto said property to provide the Services.
- D. Unsafe Conditions/Environmental Hazards.** Customer shall make reasonable efforts to assist DQE in ensuring Customer locations are free from unsafe conditions and environmental hazards and Customer hereby agrees to assist DQE in any required inspections, precautionary efforts, and mitigation efforts. In the event DQE identifies unsafe conditions or environmental hazards at any Customer location that would expose DQE's personnel or contractors performing work on behalf of DQE to an unreasonable risk of injury or threat to health and/or safety, all work will stop and DQE shall notify Customer promptly. DQE shall be excused from its obligations hereunder until (1) such unsafe conditions and/or environmental hazards are removed or mitigated to DQE's reasonable satisfaction; (2) DQE and Customer agree to any alternative to DQE's work at Customer location; or (3) such unsafe conditions or environmental hazards can be reasonably addressed by DQE taking the necessary safety precautions for protection of DQE, its employees and contractors. At locations where DQE's cost to remove or mitigate unsafe conditions or environmental hazards are extraordinary, DQE shall immediately notify Customer and DQE may elect to either (a) negotiate a one-time charge to Customer to mitigate such costs to DQE or (b) terminate the Services at such location without liability to either party, except that Customer shall reimburse DQE for all out of pocket costs incurred to date.
- E. Mandated Relocation.** In the event that DQE shall at any time be required by any entity

having the legal authorization to compel such action, to transfer, rearrange or relocate any portion of the fiber used in the provision of Services, DQE may require such transfer, rearrangement or relocation at its own expense. DQE shall use commercially reasonable efforts to transfer, rearrange or relocate such fiber in such a manner as to avoid interruption in service to Customer or its customers.

- F. Acceptance of Services.** Upon completion of installation and activation, DQE shall provide Customer with a Service Activation Notice ("SAN"), after which time Customer shall have two (2) business days to test the Services. After said two-day period, if Customer does not provide DQE with written notice that the Services(s) fail to conform to the specifications on the Customer Service Order, the Services shall be deemed accepted, and the date upon which the SAN was delivered to Customer shall be deemed the "Service Commencement Date" for billing purposes. If Customer does provide DQE with written notice that the Services do not conform to the specifications in the Customer Service Order, DQE will take any necessary corrective action, provide Customer with two (2) business days to re-test the Service(s), and the foregoing procedure will again apply. Any act, or deliberate failure to act, by Customer to prevent installation or testing shall also constitute establishment of the Service Commencement Date.
- G. Relocation and Changes.** If a Customer Service Order is altered, including, without limitation, any changes in the configuration or delivery of service, or cancelled at Customer's request after its submission and DQE's acceptance of such Customer Service Order; DQE may charge Customer a cancellation or change order fee. The amount of this fee will be communicated by DQE upon acceptance of a change or cancellation order. Customer-driven changes related to handoff type that require an additional truck roll for DQE will result in a \$250 Non-Recurring Fee.

5. CONFIDENTIALITY AND USE AND DISCLOSURE OF CUSTOMER INFORMATION.

- A. General.** "Confidential Information" shall mean all information, including this Agreement and all written or oral pricing and contract proposals exchanged by the Parties, regarding the telecommunications needs of Customer and the Services that DQE offers under this Agreement disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party"), regardless of whether such information is expressly marked or identified as confidential or proprietary. Confidential Information shall be used solely for providing Service under this Agreement and may not be disclosed or copied unless authorized by the Disclosing Party in writing. Confidential Information does not include any information that is (i) independently developed by the Receiving Party; (ii) lawfully received by the Receiving Party free from any obligation of confidentiality; or (iii) becomes generally available to the public other than by breach of this Agreement. Notwithstanding anything in this Section to the contrary, the fact that Customer is a customer of DQE shall not be deemed Confidential Information and DQE may disclose the same without liability therefor. Disclosing Party shall be entitled to injunctive relief for any violation of this Section.
- B. CPNI.** Customer Proprietary Network Information ("CPNI") is information that DQE and other telecommunications carriers obtain when providing telecommunications services. CPNI includes the types of telecommunications services purchased, how such services are used, and the billing information related to those services. DQE has a duty to protect the confidentiality of all CPNI. Unless otherwise notified, Customer agrees that DQE may use Customer's CPNI solely for the purpose of marketing to Customer additional services

DQE can provide beyond those currently purchased or to offer services tailored to Customer's specific needs. Customer may restrict DQE's use of Customer's CPNI for this purpose by providing notice to DQE.

- C. **CALEA Compliance.** DQE must comply with the obligations under the Communications Assistance for Law Enforcement Act (CALEA), and therefore, Customer information may be subject to review by law enforcement.

6. INDEMNIFICATION.

DQE and Customer each agree to indemnify and hold harmless the other Party (and its respective officers, agents, employees, contractors, subcontractors, suppliers, invitees and representatives) from and against any and all third party claims of loss, damages, liability, cost and expenses (including reasonable attorney's fees and expenses) arising, directly or indirectly, in whole or in part, by any act of gross negligence, omission or willful misconduct of the indemnifying Party in connection with its performance under this Agreement. In addition, Customer agrees to indemnify DQE from any and all third party claims of damages, liability, costs and expenses (including reasonable attorney's fees and expenses) arising from any unlawful Customer activity, claims alleging libel, slander, invasion of privacy, violation of intellectual property rights, or any violation of DQE's Acceptable Use Policy, regardless of whether done with intent or knowledge.

7. LIMITATION OF LIABILITY.

- A. **General Limitations.** DQE shall not be liable for loss or damage occasioned by a Force Majeure event (as defined in Section 10, below). DQE's total liability for any and all causes and claims whether based in contract, warranty, gross negligence or otherwise shall be limited to the lesser of (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by DQE from Customer over the preceding three (3) months for the Service affected. No cause of action under any theory which accrued more than one (1) year prior to the filing of a complaint alleging such cause of action may be asserted by either Party against the other Party.
- B. **Special Damages.** IN NO EVENT SHALL EITHER PARTY OR ANY OF DQE'S SUPPLIERS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING GROSS NEGLIGENCE OR TORT) ARISING OUT OF THIS AGREEMENT, OR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER, EVEN IF SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT THE AMOUNTS PAYABLE HEREUNDER BY CUSTOMER ARE BASED IN PART UPON THESE LIMITATIONS, AND FURTHER AGREES THAT THESE LIMITATIONS SHALL APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT ANY CONTRACT BETWEEN DQE AND THE OWNER OF THE PREMISES IS A SEPARATE AGREEMENT, TO WHICH CUSTOMER IS NOT A THIRD PARTY BENEFICIARY.

8. DISCLAIMER OF WARRANTIES.

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, DQE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT. DQE SPECIFICALLY

DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OF THIRD-PARTY RIGHTS, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

9. INSURANCE.

- A.** During the Term, DQE shall, at its expense, secure and maintain in force, general liability insurance, with competent and qualified issuing insurance companies, including the following coverage: Worker's Compensation Insurance complying with the laws of the Commonwealth of Pennsylvania and Employers Liability Insurance with limits of \$100,000.00 (one hundred thousand dollars) for each occurrence; and Commercial General Liability Insurance (covering liability assumed in this Agreement); such that the total available limits to all insureds will not be less than \$1,000,000 (one million dollars) combined single limit for each occurrence and \$1,000,000 (one million dollars) aggregated for each annual period, and umbrella liability insurance coverage with limits not less than \$3,000,000 (above the primary policy). Such insurance may be provided in policy or policies, primary and excess, including the so-called umbrellas or catastrophic forms.
- B.** During the Term, Customer shall, at its expense, secure and maintain in force, with competent and qualified issuing insurance companies: Commercial General Liability Insurance (covering liability assumed in this Agreement); such that the total available limits to all insureds will not be less than \$1,000,000 (one million dollars) combined single limit for each occurrence and \$1,000,000 (one million dollars) aggregated for each annual period, and umbrella liability insurance coverage with limits not less than \$3,000,000 (above the primary policy). Such insurance may be provided in policy or policies, primary and excess, including the so-called umbrellas or catastrophic forms.

10. FORCE MAJEURE.

DQE's ability to provide the Services may be impeded by events or actions outside of DQE's reasonable control, including, without limitation, acts of God, acts of nature, such as floods, fires, hurricanes, earthquakes, acts of war or terrorism, including cyber-terrorism, power outages, internet outages, fiber cuts, labor difficulties of DQE or any of its third-party contractors or suppliers (including, but not limited to, strikes, slowdowns, picketing or boycotts), failure of third-party suppliers, changes in applicable laws and regulations, or any other cause or circumstances beyond the commercially reasonable control of the affected party ("Force Majeure"). DQE shall not be responsible to Customer for any failure to provide the Services due to an event of Force Majeure. Customer shall not be liable for Service Fees during any Force Majeure period during which DQE is unable to provide Services.

11. DISPUTE RESOLUTION.

Any disagreement or dispute between the Parties shall, if not promptly resolved by mutual agreement, be reduced to writing and submitted to executive officers of each Party designated by such Party to handle such disputes. Within thirty (30) days of the submittal, such executive officers may, upon mutual agreement, meet to resolve the dispute and to hear any arguments that a Party wishes to make in connection therewith. If the executive officers reach

an agreement on the disposition of the dispute, they shall promptly issue their joint written decision resolving the dispute. Any dispute so dealt with shall be conclusively and finally decided and shall not be the subject of any litigation. Should the executive officers be unable to promptly resolve a dispute, either Party may commence litigation in a court of competent jurisdiction and venue.

12. NOTICES.

All notices, requests, or other communications (excluding invoices) shall be in writing and either transmitted via (i) certified or registered mail (return receipt requested), (ii) overnight courier or hand delivery, or (iii) e-mail, with a requested delivery or read receipt, to the Parties at the addresses identified on the signature page or as otherwise updated during the Term.

13. GOVERNMENT REGULATION.

Customer recognizes that certain Services provided under this Agreement may be telecommunications services subject to regulation by the Federal Communications Commission and/or the applicable state Public Utilities Commission. Services provided hereunder may result in required contributions to federal or state Universal Service or other funds, which are subject to change by legislation or regulations from time to time. DQE shall treat Customer as an end user of Services and Customer shall be responsible for payment of all contributions arising from these Services unless Customer provides a certification in a manner acceptable to DQE that it is not an end user or is otherwise exempt from these contributions. If any change in law or regulation requires modification of the Services or of DQE Facilities due to the nature of Customer's business or Customer's use of the Services, Customer shall be responsible for a pro rata share of the costs for such modifications (the "Modification Fee"), along with any other similarly affected DQE customers. This Agreement shall be modified by DQE to comply with any changes in federal, state or local laws, including but not limited to future regulations of the Federal Communications Commission or the applicable state Public Utility Commission. Modifications to facilities required by changes in law may be subject to additional fees.

14. GOVERNING LAW/JURISDICTION.

This Agreement shall be governed by, enforced and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles. The Parties agree that the state and federal courts in Pittsburgh, Pennsylvania shall have proper and exclusive jurisdiction and venue for any court proceedings arising from this Agreement and the Parties hereto waive any claim based on inconvenient forum or venue, or lack of jurisdiction.

15. GENERAL.

- A. Entire Agreement, Interpretation.** This Agreement, the applicable Service Schedules and Customer Service Orders, the effective tariffs for a regulated Service, and any other attachments incorporated therein shall collectively constitute the "Agreement" between the Parties and these terms and conditions shall apply to all Services provided to Customer. This Agreement contains the entire agreement between the parties with respect to the subject matter and supersedes any and all prior oral or written agreements. In the event of a conflict between any of the components of this Agreement, precedence will be given in the following order: (i) the Customer Service Order but solely with respect to the Service covered by that Customer

Service Order; (ii) the Service Schedule but solely with respect to the Service covered by that Service Schedule; (iii) this Agreement; and (j)v the applicable service tariff (if any) within the relevant jurisdiction. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect, and such invalid provisions shall be deemed to be modified to be enforceable to the fullest extent permitted by law.

- B. No Waiver.** A Party's failure to enforce a provision at one time shall not constitute a waiver of compliance with such provision, and a Party's waiver of a breach of any provision contained in this Agreement shall not constitute a waiver of any other breach or of any subsequent breach of the same provision. No waiver, consent, modification, amendment or change of the terms contained in this Agreement shall be binding unless made in writing and signed by both Parties.
- C. Assignment.** This Agreement shall be binding upon the Parties and their respective successors and assigns. Customer shall not assign or otherwise transfer its rights hereunder or any interest herein without the prior written consent of DQE.

INTERNET

1. **SERVICE DESCRIPTION.** DQE "Internet Service" provides point-to-point connectivity and access to the public Internet through a single NID connected you our network and installed at your location. Internet speed performance may vary due to device limits, network and other factors. Locations cannot be modified during the Term.

DQE Internet Service contains the following attributes:

- **Symmetric Bandwidth**
 - **Single Path**
 - **One Static IP Address**
 - **Bandwidth Options at 100 Mbps, 200 Mbps, 500 Mbps, or 1 Gbps**
2. **SERVICE INSTALLATION.** You agree to allow DQE and its agents to enter your property at reasonable times for the installation of DQE Equipment and Services. If you are not the owner of the premises, you are responsible for obtaining any necessary approval from the owner to allow us to perform the installation activities. In addition, you agree to supply us, if we ask, the owner's name, address, and phone number and evidence that the owner has authorized you to grant access to us and our agents to the premises. Where DQE determines that: (i) an installation survey is required to determine serviceability; or (ii) it is necessary to install additional network facilities to reach you, then (a) DQE may charge you additional non-recurring charges or monthly recurring charges not otherwise set forth in the Sales Order, and (b) the installation of Service may be delayed. DQE will provide notice to you of any additional charges as soon as practicable. You shall have three (3) days from receipt of such notice to reject in writing the extension of facilities without liability, at which point DQE will have no further obligation to provide Services to you.
 3. **IP ADDRESS USAGE.** For Service, public IP addresses will be provided in accordance with American Registration for Internet Numbers ("ARIN") policies and guidelines. DQE reserves the right to administer public IP addresses assigned by DQE as required to meet any requirements of ARIN or other Internet policies, which includes the option to renumber or reassign public IP addresses administered by DQE. BGP Peering is not supported on this product.
 4. **WARRANTY AND LIMITATIONS.** DQE makes no representation or guaranty of the speed and availability of the Service. Many factors affect Internet speed, and the actual speed of the Service may vary accordingly. However, DQE is committed to providing high quality service and will use commercially reasonable efforts to provide the Service to you 24 hours a day, 7 days per week. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond DQE's reasonable control. Temporary service interruptions or outages for such reasons, as well as service interruptions or outages caused by you, , Customer equipment, or by a Force Majeure Event shall not constitute a failure by DQE to perform its obligations under this Service Schedule.

5. SUSPENSION AND TERMINATION.

- A. Suspension.** You acknowledge that DQE's Internet Service is a shared bandwidth service and any excessive use of bandwidth may place a large burden on DQE's network. In the event that, in DQE's reasonable determination, your usage is deemed to be excessive or more than normal, DQE has the right to limit your bandwidth consumption by any means available to DQE. Furthermore, DQE reserves the right to suspend or terminate your Service if your excessive usage becomes chronic or is critically impacting, or threatens to impact, DQE's network or servers or customers. DQE reserves the right to disconnect, reclassify Service to a higher grade, or terminate Service for not complying with any provision of this Agreement or DQE policy.
- B. Termination.** DQE may terminate the Internet Services for convenience by giving at least 90 days prior written notice to you.

DEDICATED INTERNET

1. **SERVICE DESCRIPTION.** DQE “Dedicated Internet Service” provides connectivity and access to the public Internet via DQE’s Tier 1 peering arrangements with various Internet network providers. DQE’s Internet service is provided via its fiber-based ethernet network with a single autonomous system, and can be scaled from 10 Mbps to 10 Gbps. The standard technical specifications of Dedicated Internet Service are as follows:

Dedicated Internet	
Packet Delivery	SLA Credit
Symmetrical Bandwidth	Supported
Dedicated Bandwidth (CIR)	100% CIR of PIR
SLA – Availability	99.99%
SLA – Packet Loss	<0.001%
SLA – Latency	<5ms
Customer Web Portal Access	Standard
IPv4 IP Addressed – Standard	/29 (3 Usable)
IPv6 Addresses	/48 (2^80 Usable)
BGP Peering	Optional
DQE Upstream Router Redundancy	Dual
Redundant Customer Premise Switch	Optional

2. **DEFINITIONS.** The following definitions shall apply to Dedicated Internet Services:
- A. **95th Percentile Calculation** – The calculation method used to measure bandwidth usage for services which specify the Burstable scaling option. Samples of average bandwidth utilization rates of both inbound and outbound traffic from Customer port(s) are collected in five (5) minute intervals over a calendar month. The higher of such samples (Inbound or Outbound) are placed on a list and sorted from highest to lowest in amount of Mbps. The highest five percent (5%) of samples are discarded and the next remaining highest sample is chosen to represent the 95th percentile calculation for that given month.
 - B. **Availability** – The amount of time (often presented as a percentage) that a service is available to the Customer (i.e. unaffected by a Service Outage).
 - C. **Burstable Bandwidth** – The service option for scaling an increase of bandwidth greater than the subscribed level (provisioned as EIR) in which the 95th Percentile Calculation is utilized to determine the additional service fees owed for a given month in which the bandwidth utilized is in excess of the subscribed level.
 - D. **Committed Information Rate (CIR)** – Refers to bandwidth provisioned to a service that is reserved across the DQE network without any oversubscription. The Customer’s CIR bandwidth level is dedicated and always available to the service without contention from other network traffic.

- E. Dial-up Bandwidth** – The service option for scaling an increase in bandwidth greater than the subscribed level in which the Customer utilizes the DQE Customer Control Center (CCC) web portal in order to temporarily increase the available bandwidth of the service. This method results in additional service fees that are based on a per Mbps per Day basis of the level in which the Customer increases the bandwidth in excess of the subscribed level.
- F. Excess Information Rate (EIR)** – Refers to bandwidth provisioned to a service that is not reserved across the network, but allows a service to burst above the Committed Information Rate.
- G. Latency** – The measure of the average one-way network delay of the Ethernet frames that transit the DQE network and are delivered by DQE via the intended On-Net service in a calendar month.
- H. Off-Net Service** – Any service which does not meet the definition of On-Net.
- I. On-Net Service** – A service in which all Customer locations of the service are provisioned entirely on DQE-owned facilities and does not include any Third-Party Services (as defined herein).
- J. Packet Loss** – The measure of the average number of Ethernet frames undelivered by DQE via the intended On-Net service in a calendar month.
- K. Subscribed Level** – Amount of bandwidth for which a customer is contracted for a given service, as stated on the Service Order.
- L. Type II Service** – Metro Ethernet Service in which a third-party service provider is utilized to provide the connectivity to the customer premise/site, due to being outside DQE's service footprint.
- M. Unprotected Service** – An Internet service that does not include a protection scheme that allows for the rerouting of traffic upon a fiber cut or equipment failure. Services that are unprotected will be specifically stated as such on the applicable Service Order.
- N. UNI** – The **User to Network Interface** port, typically located at a customer's premise, common telecommunications facility or meet-me-point, connecting the Customer to DQE's network.

3. IP ADDRESS ALLOCATION.

- A. ARIN.** For Internet service, public IP addresses will be provided in accordance with American Registry for Internet Numbers ("ARIN") policies and guidelines. DQE reserves the right to administer public IP addresses assigned by DQE as required to meet any requirements of ARIN other Internet policies, which includes the option to renumber or reassign public IP addresses administered by DQE. Use of the Services by Customer for any purpose in violation of law shall constitute a default under the Agreement.
- B. IPv4 IP Address Assignments.** Customer acknowledges that due to the scarcity of IPv4 prefixes, the ARIN requires that DQE receive from Customer written justification (utilizing the standard DQE IP Justification Form) for IPv4 prefix IP address assignments prior to IPv4 prefix assignment. Customer must justify Customer's IP Address assignment by demonstrating that Customer has an immediate requirement for twenty-five percent (25%) of the IPv4 addresses

being requested and a plan to utilize fifty percent (50%) of the requested assignment within one year of allocation. Customer's predicted or anticipated customers shall not be sufficient to establish Customer's need. Customer must efficiently utilize all previous allocations and at least 80% of their most recent allocation at the time of request in order to receive additional space.

C. IPv6 IP Address Assignments. Customer shall not be required to justify receipt of IPv6 prefix IP address assignments; provided, however, that if limitations on IPv6 are imposed by ARIN or its successor in administrating IP addresses, IPv6 IP addresses shall be subject to such limitations.

D. IP Address Reclamation. DQE may, at its discretion, reclaim all IPv4 and IPv6 assignments at any time upon sixty (60) days' written notice and shall reallocate a smaller number of IPv4 and IPv6 assignments.

4. SERVICE LEVEL REQUIREMENTS. DQE's service level agreements ("SLA") focus on three key areas – Availability, Packet Loss, and Intra-Metro Latency (Delay).

A. Availability. The Availability service level commitment Dedicated Internet Service is 99.99%. Service is "Unavailable" (except in the case of an Excused Outage) if the Customer port at a Customer site is unable to pass traffic, or pass traffic efficiently. Service Unavailability is calculated from the timestamp when Customer calls in a ticket to the DQE NOC or opens a ticket via the DQE Customer Control Center until the time the service is confirmed restored. If credits are due under this SLA, no other SLAs apply to the same event.

DQE Availability SLA Credit Formula	
Cumulative Unavailability (hrs:mins:secs)	SLA Credit
00:00:05 to 00:04:30	N/A
00:04:31 to 00:30:00	5%
00:30:01 to 02:00:00	20%
02:00:01 to 05:00:00	30%
05:00:01 to 24:00:00	50%
24:00:01 to 48:00:00	75%
48:00:01 or greater	100%

B. Packet Loss. The Packet Loss service level commitment for Dedicated Internet Service is 0.001%. Packet Loss is the average number of Ethernet frames undelivered by DQE to the intended on-net destination in a calendar month.

DQE Packet Loss SLA Credit Formula	
Packet Delivery	SLA Credit
99.998% to 99.900%	5%
99.899% to 98.000%	10%
97.999% to 95.000%	50%
94.999% or less	100%

- C. Delay (Intra-Metro Latency).** The Latency service level commitment for Dedicated Internet Service is less than 5 ms. Latency is the measure of the average one-way network delay of frames that transit the DQE network and are delivered by DQE to the intended on-net destination in a calendar month.

DQE Latency SLA Credit Formula	
Latency SLA	SLA Credit
5 ms to 10 ms	5%
10 ms to 15 ms	50%
15 ms or greater	100%

- D. Service Level Credits.** In the event that DQE does not achieve a particular Service Level in a given month, for reasons other than an Excused Outage (as defined below), DQE will issue a credit to Customer as set forth in the applicable Service Level table above, upon Customer's request. To request a credit, Customer must contact DQE's Customer Service by calling toll free in the U.S. and Canada 1-866-GO-FIBER or delivering a written request within thirty (30) days of the end of the month for which a credit is requested. An "Excused Outage" is an outage caused by: (a) any act or omission of the Customer or its end-user customers, or their representatives, contactors, agents, authorized invitees, successors or assigns; (b) the configuration, failure or malfunction of non-DQE equipment or systems; (c) scheduled maintenance or planned enhancements or upgrades to the DQE network; (d) DQE not being given reasonable access to the premises; (e) Customer exceeding the maximum capacity of a port connection or any other rate limitation as set forth in the applicable Service Order; or (f) a Force Majeure Event as defined in the Online Terms and Conditions.
- E. Escalation Process.** In the event that Customer becomes aware of a network failure, Customer will contact DQE's NOC, and DQE will respond within (1) hour. If Customer receives no response within one (1) hour, Customer shall utilize the escalation process provided to Customer.

- 5. WARRANTY AND LIMITATIONS.** DQE warrants that during the Term, the Services will meet the specifications on the Customer Service Order. If the Services fail to meet such specifications, DQE will provide support and maintenance to Customer in accordance with the SLAs set forth herein. Each SLA will be effective on the applicable Service Commencement Date but credits will not apply until the first full calendar month in which a Service is provided. If the Services fail to meet the specifications on the Customer Service Order then Customer shall be entitled to remedies set forth in the applicable SLA.

EXCEPT AS SET FORTH HEREIN, THE CREDIT CALCULATIONS SET FORTH IN THE SLA SHALL BE CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY FAILURE OF THE SERVICES TO MEET THE SPECIFICATIONS. THE TOTAL AMOUNT OF CREDIT THAT WILL BE EXTENDED TO CUSTOMER AS A RESULT OF DQE'S FAILURE TO MEET THE SPECIFICATIONS SET FORTH IN THE SLA SHALL BE LIMITED TO 100% OF ONE MONTH'S RECURRING CHARGE IN ANY SINGLE MONTHLY BILLING PERIOD. EXCEPT AS SET FORTH IN THIS SECTION, DQE MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICES, EXPRESSED OR IMPLIED. DQE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. DQE EXPRESSLY DISCLAIMS ANY WARRANTY OF CONTINUOUS OR UNINTERRUPTED SERVICE.

If Customer is delinquent on any invoice, any SLA credits due to Customer shall be deducted from said delinquent amount. The application of credits does not waive Customer's obligation to pay any remaining balances or any future amounts under the Agreement.

- 6. THIRD PARTY SERVICES.** If Customer requests Services that require DQE to procure services from a third party ("Third Party Provider" or "Type II Provider") on behalf of Customer ("Third Party Services" or "Type II Services"), DQE agrees to provide such Third Party Services subject to the following to which Customer acknowledges and agrees: (a) the Third Party Services will be provided by a Third Party Provider; (b) the Third Party Services will function and perform in accordance with the service level obligations provided by the Third Party Provider to DQE (i.e., the standard DQE SLA does not apply); (c) any rights, remedies, outage credits, or other service-specific terms that the Customer may have or be entitled to under the Agreement are limited to the same terms that DQE has in place with the Third Party Provider; (d) the costs for the Third Party Services will be incorporated into the Service Fee and Installation Fee set forth in the applicable Service Order; (e) if DQE purchases Third Party Services pursuant to Third Party Provider's applicable tariff, Customer is responsible for any additional charges imposed on DQE; and (f) if the Customer cancels or terminates for its convenience, any Service which includes a Third Party Service prior to the conclusion of the Service Term, then the Customer will pay any and all cancellation and/or early termination charges that DQE actually incurs for the cancellation or termination of such Third Party Services, plus any charges remaining under the Agreement. Third Party Providers may require Customer to provide, at Customer's sole cost and expense, conduit access and/or extension of demark to Customer's facility to enable installation of Third-Party Services.
- 7. SCALABILITY.** Some or all of DQE's services may be scalable, which will allow Customer on a periodic basis, to increase the level of bandwidth it desires to use. Customers have two options to address the ability to scale these applicable services in excess of their subscribed bandwidth levels.

 - A. Dial-Up Bandwidth:** This option allows customers to temporarily increase their bandwidth up to a maximum of the UNI capacity. Under this option, the Customer will be able to modify its bandwidth for such services by accessing the DQE Control Center Page (CCC) located at ccc.dqecom.com and choosing the scalability feature for the DQE product for which the Customer desires to modify its bandwidth. The additional bandwidth is provisioned as EIR. Customer represents and warrants that it will distribute its DQE CCC access (username/password) only to those employees authorized on behalf of Customer to modify Customer's bandwidth level. Through use of the Dial-Up feature, Customer shall be able to agree, by pressing an appropriately labeled key, to modify its level of bandwidth, provided that Customer shall not be permitted to decrease its bandwidth below the amount set forth on the applicable Customer Service Order. Customer hereby agrees that each time it presses the appropriately labeled key to invoke the Dial-Up scalability feature; it will pay the appropriate Service Fee, until such time, if any, that Customer again changes its bandwidth. Additional bandwidth is billed on a per day per Mbps basis. The standard Service Fee for invoking this feature is detailed below, and applies unless specified otherwise on the applicable Service Order. For purposes of computing the fee for the scalability feature only, a day is defined as any twenty-four (24) hour period or portion thereof. As consideration for having the ability to quickly modify bandwidth using the scalability feature, Customer waives any right it may have to a written amendment documenting the Parties' agreement to modify Customer's bandwidth or documenting Customer's obligation to pay the applicable Service Fee.

Internet Services = \$1.50/Mbps per day

B. Burstable Bandwidth: This option allows customers traffic to burst above and beyond the Subscribed level, when the traffic dictates that it is needed. The service is provisioned above the Subscribed level with additional EIR to reach a Peak Information Rate (PIR). On a monthly basis, the 95th Percentile Calculation is used to determine if the Customer utilized the burstable bandwidth in a manner that results in additional charges. The resulting 95th Percentile Calculation is compared to the Subscribed service level. The amount of which the 95th Percentile Calculation is greater than the Subscribed Level is then compared to a Standard Rate Chart (shown below) in order to determine additional charges on a per Mbps per month basis. The Standard Rate Chart applies, unless specified otherwise on the applicable Service Order.

If 0-10 Mbps in excess of Subscribed bandwidth = \$20/Mbps per month

If 10-50 Mbps in excess of Subscribed bandwidth = \$15/Mbps per month

If 50-100 Mbps in excess of Subscribed bandwidth = \$10/Mbps per month

If 100+Mbps in excess of Subscribed bandwidth = \$7.50/Mbps per month

8. TERMINATION. If Customer has qualified for credits for any single service in excess of a total of sixty (60) days recurring charges in any continuous twelve (12) month period, following thirty (30) days advanced written notice, Customer may terminate the applicable Dedicated Internet Customer Service Order with no additional obligations. Qualified credits are defined as issues with service availability, latency, jitter and documented via a DQE Network Operations Center Trouble Ticket. The termination right must be exercised within sixty (60) days of the event giving rise to it.

METRO ETHERNET

1. **SERVICE DESCRIPTION.** DQE “Metro Ethernet Services” provide dedicated connectivity for transport of data, voice, video or other forms of communications traffic. Metro Ethernet service supports bandwidth levels from 10 Mbps to 10 Gbps. Metro Ethernet service terminates at the User to Network Interface (“UNI”) or Network to Network Interface (“NNI”) ports, typically located at a customer’s premise, common telecommunications facility or meet-me-point. In general, the service is based on terminology and attributes defined and used by the Metro Ethernet Forum (“MEF”). Metro Ethernet service follows the definition of Ethernet Private Line (“EPL”) and Ethernet Virtual Private Line (“EVPL”) network configurations, and can be specified on Service Orders in the following configurations:
 - **E-Line:** An EPL service comprised of a UNI at each Customer site connected via an Ethernet Virtual Circuit (“EVC”) providing point-to-point Ethernet transport services or an EVPL service comprised of an aggregation UNI or NNI at one site connecting multiple UNIs which serves to aggregate multiple Customer locations to a central hub location in a point-to-multipoint configuration.
 - **E-LAN:** A service comprised of a UNI at each of three or more Customer sites providing multipoint-to-multipoint Ethernet transport between three or more Customer locations.
2. **DEFINITIONS.** The following definitions shall apply to Dedicated Internet Services:
 - A. **95th Percentile Calculation** – The calculation method used to measure bandwidth usage for services which specify the Burstable scaling option. Samples of average bandwidth utilization rates of both inbound and outbound traffic from Customer port(s) are collected in five (5) minute intervals over a calendar month. The higher of such samples (Inbound or Outbound) are placed on a list and sorted from highest to lowest in amount of Mbps. The highest five percent (5%) of samples are discarded and the next remaining highest sample is chosen to represent the 95th percentile calculation for that given month.
 - B. **Availability** – The amount of time (often presented as a percentage) that a service is available to the Customer (i.e. unaffected by a Service Outage).
 - C. **Burstable Bandwidth** – The service option for scaling an increase of bandwidth greater than the subscribed level (provisioned as EIR) in which the 95th Percentile Calculation is utilized to determine the additional service fees owed for a given month in which the bandwidth utilized is in excess of the subscribed level.
 - D. **Committed Information Rate (CIR)** – Refers to bandwidth provisioned to a service that is reserved across the DQE network without any oversubscription. The Customer’s CIR bandwidth level is dedicated and always available to the service without contention from other network traffic.
 - E. **Dial-up Bandwidth** – The service option for scaling an increase in bandwidth greater than the subscribed level in which the Customer utilizes the DQE Customer Control Center (CCC) web portal in order to temporarily increase the available bandwidth of the service. This method

results in additional service fees that are based on a per Mbps per Day basis of the level in which the Customer increases the bandwidth in excess of the subscribed level.

- F. Excess Information Rate (EIR)** – Refers to bandwidth provisioned to a service that is not reserved across the network, but allows a service to burst above the Committed Information Rate.
 - G. Latency** – The measure of the average one-way network delay of the Ethernet frames that transit the DQE network and are delivered by DQE via the intended On-Net service in a calendar month.
 - H. Off-Net Service** – Any service which does not meet the definition of On-Net.
 - I. On-Net Service** – A service in which all Customer locations of the service are provisioned entirely on DQE-owned facilities and does not include any Third-Party Services (as defined herein).
 - J. Packet Loss** – The measure of the average number of Ethernet frames undelivered by DQE via the intended On-Net service in a calendar month.
 - K. Subscribed Level** – Amount of bandwidth for which a customer is contracted for a given service, as stated on the Service Order.
 - L. Type II Service** – Metro Ethernet Service in which a third-party service provider is utilized to provide the connectivity to the customer premise/site, due to being outside DQE's service footprint.
 - M. Unprotected Service** – An Internet service that does not include a protection scheme that allows for the rerouting of traffic upon a fiber cut or equipment failure. Services that are unprotected will be specifically stated as such on the applicable Service Order.
- 3. SERVICE LEVEL REQUIREMENTS.** DQE's service level agreements ("SLA") focus on four key areas – Availability, Packet Loss, Intra-Metro Latency (Delay), and Jitter.
- 1. Availability.** The Availability service level commitment Dedicated Internet Service is 99.99%. Service is "Unavailable" (except in the case of an Excused Outage) if the Customer port at a Customer site is unable to pass traffic, or pass traffic efficiently. Service Unavailability is calculated from the timestamp when Customer calls in a ticket to the DQE NOC or opens a ticket via the DQE Customer Control Center until the time the service is confirmed restored. If credits are due under this SLA, no other SLAs apply to the same event.

DQE Availability SLA Credit Formula		
Cumulative Unavailability (hrs:mins:secs)	SLA Credit	
	Protected Metro Ethernet	Unprotected Metro Ethernet
00:00:05 to 00:04:30	N/A	N/A
00:04:31 to 00:30:00	5%	N/A
00:30:01 to 02:00:00	20%	15%
02:00:01 to 05:00:00	30%	25%
05:00:01 to 24:00:00	50%	40%
24:00:01 to 48:00:00	75%	65%
48:00:01 or greater	100%	100%

- 2. Packet Loss.** The Packet Loss service level commitment for Dedicated Internet Service is 0.001%. Packet Loss is the average number of Ethernet frames undelivered by DQE to the intended on-net destination in a calendar month.

DQE Packet Loss SLA Credit Formula	
Packet Delivery	SLA Credit
99.998% to 99.900%	5%
99.899% to 98.000%	10%
97.999% to 95.000%	50%
94.999% or less	100%

- 3. Delay (Intra-Metro Latency).** The Latency service level commitment for Dedicated Internet Service is less than 5 ms. Latency is the measure of the average one-way network delay of frames that transit the DQE network and are delivered by DQE to the intended on-net destination in a calendar month.

DQE Latency SLA Credit Formula	
Latency SLA	SLA Credit
5 ms to 10 ms	5%
10 ms to 15 ms	50%
15 ms or greater	100%

- 4. Jitter.** The Jitter service level commitment for DQE Metro Ethernet Service is less than 5ms. Jitter is the average variation in network delay between Ethernet frames of information that transit the DQE network and are delivered by DQE to the intended On-Net destination in a calendar month.

DQE Jitter SLA Credit Formula	
Jitter	SLA Credit
5 ms to 10 ms	5%
10 ms to 15 ms	10%
15 ms 10 20 ms	50%
20 ms or greater	100%

- 5. Service Level Credits.** In the event that DQE does not achieve a particular Service Level in a given month, for reasons other than an Excused Outage (as defined below), DQE will issue a credit to Customer as set forth in the applicable Service Level table above, upon Customer's request. To request a credit, Customer must contact DQE's Customer Service by calling toll free in the U.S. and Canada 1-866-GO-FIBER or delivering a written request within thirty (30) days of the end of the month for which a credit is requested. An "Excused Outage" is an outage caused by: (a) any act or omission of the Customer or its end-user customers, or their representatives, contactors, agents, authorized invitees, successors or assigns; (b) the configuration, failure or malfunction of non-DQE equipment or systems; (c) scheduled maintenance or planned enhancements or upgrades to the DQE network; (d) DQE not being given reasonable access to the premises; (e) Customer exceeding the maximum capacity of a port connection or any other rate limitation as set forth in the applicable Service Order; or (f) a Force Majeure Event as defined in the Online Terms and Conditions.
- 6. Escalation Process.** In the event that Customer becomes aware of a network failure, Customer will contact DQE's NOC, and DQE will respond within (1) hour. If Customer receives no response within one (1) hour, Customer shall utilize the escalation process provided to Customer.
- 4. WARRANTY AND LIMITATIONS.** DQE warrants that during the Term, the Services will meet the specifications on the Customer Service Order. If the Services fail to meet such specifications, DQE will provide support and maintenance to Customer in accordance with the SLAs set forth herein. Each SLA will be effective on the applicable Service Commencement Date but credits will not apply until the first full calendar month in which a Service is provided. If the Services fail to meet the specifications on the Customer Service Order then Customer shall be entitled to remedies set forth in the applicable SLA.

EXCEPT AS SET FORTH HEREIN, THE CREDIT CALCULATIONS SET FORTH IN THE SLA SHALL BE CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY FAILURE OF THE SERVICES TO MEET THE SPECIFICATIONS. THE TOTAL AMOUNT OF CREDIT THAT WILL BE EXTENDED TO CUSTOMER AS A RESULT OF DQE'S FAILURE TO MEET THE SPECIFICATIONS SET FORTH IN THE SLA SHALL BE LIMITED TO 100% OF ONE MONTH'S RECURRING CHARGE IN ANY SINGLE MONTHLY BILLING PERIOD. EXCEPT AS SET FORTH IN THIS SECTION, DQE MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICES, EXPRESSED OR IMPLIED. DQE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. DQE EXPRESSLY DISCLAIMS ANY WARRANTY OF CONTINUOUS OR UNINTERRUPTED SERVICE.

If Customer is delinquent on any invoice, any SLA credits due to Customer shall be deducted from said delinquent amount. The application of credits does not waive Customer's obligation to pay any remaining balances or any future amounts under the Agreement.

- 5. THIRD PARTY SERVICES.** If Customer requests Services that require DQE to procure services from a third party (“Third Party Provider” or “Type II Provider”) on behalf of Customer (“Third Party Services” or “Type II Services”), DQE agrees to provide such Third Party Services subject to the following to which Customer acknowledges and agrees: (a) the Third Party Services will be provided by a Third Party Provider; (b) the Third Party Services will function and perform in accordance with the service level obligations provided by the Third Party Provider to DQE (i.e., the standard DQE SLA does not apply); (c) any rights, remedies, outage credits, or other service-specific terms that the Customer may have or be entitled to under the Agreement are limited to the same terms that DQE has in place with the Third Party Provider; (d) the costs for the Third Party Services will be incorporated into the Service Fee and Installation Fee set forth in the applicable Service Order; (e) if DQE purchases Third Party Services pursuant to Third Party Provider’s applicable tariff, Customer is responsible for any additional charges imposed on DQE; and (f) if the Customer cancels or terminates for its convenience, any Service which includes a Third Party Service prior to the conclusion of the Service Term, then the Customer will pay any and all cancellation and/or early termination charges that DQE actually incurs for the cancellation or termination of such Third Party Services, plus any charges remaining under the Agreement. Third Party Providers may require Customer to provide, at Customer’s sole cost and expense, conduit access and/or extension of demark to Customer’s facility to enable installation of Third-Party Services.
- 6. SCALABILITY.** Some or all of DQE’s services may be scalable, which will allow Customer on a periodic basis, to increase the level of bandwidth it desires to use. Customers have two options to address the ability to scale these applicable services in excess of their subscribed bandwidth levels.
- A. Dial-Up Bandwidth:** This option allows customers to temporarily increase their bandwidth up to a maximum of the UNI capacity. Under this option, the Customer will be able to modify its bandwidth for such services by accessing the DQE Control Center Page (CCC) located at ccc.dqecom.com and choosing the scalability feature for the DQE product for which the Customer desires to modify its bandwidth. The additional bandwidth is provisioned as EIR. Customer represents and warrants that it will distribute its DQE CCC access (username/password) only to those employees authorized on behalf of Customer to modify Customer’s bandwidth level. Through use of the Dial-Up feature, Customer shall be able to agree, by pressing an appropriately labeled key, to modify its level of bandwidth, provided that Customer shall not be permitted to decrease its bandwidth below the amount set forth on the applicable Customer Service Order. Customer hereby agrees that each time it presses the appropriately labeled key to invoke the Dial-Up scalability feature; it will pay the appropriate Service Fee, until such time, if any, that Customer again changes its bandwidth. Additional bandwidth is billed on a per day per Mbps basis. The standard Service Fee for invoking this feature is detailed below, and applies unless specified otherwise on the applicable Service Order. For purposes of computing the fee for the scalability feature only, a day is defined as any twenty-four (24) hour period or portion thereof. As consideration for having the ability to quickly modify bandwidth using the scalability feature, Customer waives any right it may have to a written amendment documenting the Parties’ agreement to modify Customer’s bandwidth or documenting Customer’s obligation to pay the applicable Service Fee.

Metro Ethernet (E-Line) = \$0.75/Mbps per day

Metro Ethernet (E-LAN) = \$0.75/Mbps per day per site

B. Burstable Bandwidth: This option allows customers traffic to burst above and beyond the Subscribed level, when the traffic dictates that it is needed. The service is provisioned above the Subscribed level with additional EIR to reach a Peak Information Rate (PIR). On a monthly basis, the 95th Percentile Calculation is used to determine if the Customer utilized the burstable bandwidth in a manner that results in additional charges. The resulting 95th Percentile Calculation is compared to the Subscribed service level. The amount of which the 95th Percentile Calculation is greater than the Subscribed Level is then compared to a Standard Rate Chart (shown below) in order to determine additional charges on a per Mbps per month basis. The Standard Rate Chart applies, unless specified otherwise on the applicable Service Order.

If 0-10 Mbps in excess of Subscribed bandwidth = \$20/Mbps per month

If 10-50 Mbps in excess of Subscribed bandwidth = \$15/Mbps per month

If 50-100 Mbps in excess of Subscribed bandwidth = \$10/Mbps per month

If 100+Mbps in excess of Subscribed bandwidth = \$7.50/Mbps per month

7. TERMINATION. If Customer has qualified for credits for any single service in excess of a total of sixty (60) days recurring charges in any continuous twelve (12) month period, following thirty (30) days advanced written notice, Customer may terminate the applicable Dedicated Internet Customer Service Order with no additional obligations. Qualified credits are defined as issues with service availability, latency, jitter and documented via a DQE Network Operations Center Trouble Ticket. The termination right must be exercised within sixty (60) days of the event giving rise to it.

WAVELENGTH

1. **SERVICE DESCRIPTION.** DQE “Wavelength Service” is a dedicated, transparent, optical wave signal for transport of high bandwidth between two Termination Nodes offered on a Protected or Unprotected basis. Customer interface consists of 2.5Gb, 10Gb, 40Gb, 1GbE, 10GbE, 40GbE and 100GbE, OTU1, OTU2, OTU2e, OTU3, OTU4 and 1Gb, 2Gb, 4Gb, 8Gb, and 10Gb Fiber Channel. Wavelength Service network configurations can be specified on Service Orders in the following configurations:
 - **Protected Wavelength** – DQE will provide a Wavelength Services circuit that is protected end to end. Dual diverse paths will be utilized, with automatic path failover.
 - **Unprotected Wavelength** – DQE will provide a Wavelength Services circuit that is unprotected end to end.
2. **DEFINITIONS.** The following definitions shall apply to Wavelength Services:
 - A. **Availability** – the amount of time (often presented as a percentage) that a service is available to the Customer (i.e. unaffected by a Service Outage).
 - B. **Off-Net Service** – any service which does not meet the definition of On-Net.
 - C. **On-Net Service** – a service in which all Customer locations of the service are provisioned entirely on DQE-owned facilities and does not include any Third Party Services (as defined herein).
 - D. **Protected Wave Service** – a Wavelength Service that includes a path protection scheme that allows for the rerouting of traffic upon a fiber cut or equipment failure. Services that are protected will be specifically stated as such on the applicable Service Order.
 - E. **Round Trip Delay (RTD)** – RTD is defined as the Layer 1 round-trip delay across the DQE Network between Customer Sites of a Wavelength Services circuit. The RTD standard is circuit specific and represents a theoretical estimate based on pre-sale design.
 - F. **Termination Node** – shall mean the locations within DQE's facilities or within Customer Premises in each of the cities in which termination is available. Each DQE Wavelength Service shall contain two (2) Termination Nodes, the exact location of which will be set forth in the Customer Order.
 - G. **Type II Service** – service in which a third party service provider is utilized to provide the connectivity to the customer premise/site, due to being outside DQE's service footprint.
 - H. **Unprotected Wave Service** – a Wavelength Service that does not include a protection scheme that allows for the rerouting of traffic upon a fiber cut or equipment failure. Services that are unprotected will be specifically stated as such on the applicable Service Order.
3. **DEMARC AND EQUIPMENT REQUIREMENTS.**
 - A. **Traffic.** To use the DQE Wavelength Service, Customer must provide to DQE, at each Termination Node, a SONET or SDH-framed 2.5Gb, 10Gb or 40Gb signal, as defined by

Telcordia GR-253-CORE, a 1Gb, 10Gb, 40Gb or 100Gb Ethernet signal, as defined by IEEE 802.3ae, a OTU1, OTU2, OTU2e, OTU3, OTU4 signal, as defined by ITU G.709, or a 1Gb, 2Gb, 4Gb, 8Gb, or 10Gb Fiber Channel signal, as defined by T11 Technical Committee within INCITS (the International Committee for Information Technology Standards (collectively, "Traffic")), which Traffic will thereafter be delivered by DQE, in like format, to the opposite and corresponding Termination Node.

- B. Demarc.** The demarcation point for the Wavelength Service shall be the DQE OSX or fiber termination panel at the Termination Node. Customer shall be solely responsible for providing all interconnection equipment used both to deliver Traffic to, or to accept Traffic from, DQE in the formats described above and for any and all protection schemes Customer chooses to implement respecting the Traffic. For a Termination Node at a location other than a DQE Gateway, Customer shall provide DQE with space and power (at no charge to DQE), as reasonably requested by DQE, for placement and operation of an OSX, fiber termination panel or other equipment within the Customer Premises.

4. INSTALLATION AND ACTIVATION PROCEDURE.

- C. Construction of Facilities.** With respect to construction of facilities to the Customer Premises and installation, maintenance and repair of facilities within the Customer Premises, Customer shall provide DQE with access to and the use of Customer's entrance facilities and inside wiring, and/or shall procure rights for DQE allowing the placement of facilities necessary for installation of facilities to deliver the DQE Wavelength Service to the Customer Premises. All costs associated with procuring and maintaining rights needed to obtain entry to the building (and the real property on which the building is located) within which the Customer Premises are located, and costs to procure and maintain rights within such building to the Customer Premises, shall be borne by Customer.

- D. Activation of Services.** Upon successful installation of equipment, thorough testing of the service(s) will be completed. The service(s) will then be handed over to the customer following a Service Activation Notice.

5. SERVICE LEVEL REQUIREMENTS. DQE's service level agreements ("SLA") focus on two key areas – Availability, and Round Trip Delay ("RTD").

- A. Availability.** The Availability service level commitment for DQE's Protected Wavelength Service is 99.99%. The Availability service level commitment for DQE's Unprotected Wavelength service is 99.5%. Service is "Unavailable" (except in the case of an Excused Outage) if the Customer port at a Customer site is unable to pass traffic, or pass traffic efficiently. Service Unavailability is calculated from the timestamp when Customer calls in a ticket to the DQE NOC or opens a ticket via the DQE Customer Control Center until the time the service is confirmed restored. If credits are due under this SLA, no other SLAs apply to the same event.

DQE Availability SLA Credit Formula		
Cumulative Unavailability (hrs:mins:secs)	SLA Credit	
	Unprotected	Protected
00:00:05 to 00:04:30	0%	5%
00:04:31 to 00:30:00	0%	10%
00:30:01 to 02:00:00	0%	25%
02:00:01 to 05:00:00	25%	50%
05:00:01 to 24:00:00	50%	75%
24:00:01 to 48:00:00	75%	100%
48:00:01 or greater	100%	100%

B. Round Trip Delay. The RTD service level commitment for DQE’s Wavelength Service is circuit specific. When requested by Customer, DQE will provide an end-to-end RTD estimate as part of the Service Order Form. RTD performance may vary at circuit completion. DQE will maintain the circuit within the specified RTD throughout the term of the circuit.

- **Round Trip Delay Calculation.** When requested and scheduled by Customer, DQE will provide the end-to-end RTD estimate as part of the order documentation, which serves as the Service Level Standard for RTD. Upon test and turn up, DQE will provide Customer with calculated or actual measured RTD.
- **Round Trip Delay Measurement.** RTD is a service level standard. Measurement of RTD may require testing the circuit in intrusive mode, in accordance with DQE testing procedures, until such time as in-service measurements are supported.

When Customer determines that the circuit is experiencing degraded service to the extent that it exceeds the expected RTD, Customer must open a trouble ticket with DQE, and release the circuit for testing and repair.

To measure the delay, a signal may be sent from one end of the circuit. At the other end of the circuit, an external loop-back may be performed on the card equipment, and the returned signal measured at the sending end. This includes the DQE add drop mux/light transmission equipment located at the Customer Site. This only covers demarcation point to demarcation point. This does not include Customer’s equipment (“CPE”), any third party equipment, or any Customer application on a covered circuit.

This includes the DQE add drop mux/light transmission equipment located at the Customer Site. DQE's measurement of RTD will be used as the value to determine whether the RTD SLA has been met. Outage minutes resulting from testing will not be considered for Hard Outage SLAs. If delay should increase during the term of the circuit, DQE will work with Customer to restore delay values to not exceed the RTD value that was agreed to prior to the completion of circuit.

C. Escalation Process. In the event that Customer becomes aware of a network failure, Customer will contact DQE’s NOC Support Line, and DQE will respond within (1) hour. If

Customer receives no response within one (1) hour, Customer shall utilize the escalation process provided by DQE.

D. Service Level Limitations. For any Off-Net or Type II service, DQE will pass-through to Customer any service levels and associated credits (or other express remedies) provided to DQE by the applicable third party carrier.

6. SERVICE LEVEL CREDITS. In the event that DQE does not achieve a particular Service Level in a given month, for reasons other than an Excused Outage (as defined below), DQE will issue a credit to Customer as set forth in the applicable Service Level table above, upon Customer's request. To request a credit, Customer must contact DQE's Customer Service by delivering a written request within thirty (30) days of the end of the month for which a credit is requested.

An "Excused Outage" is an outage caused by:

- any act or omission of the Customer or its end-user customers, or their representatives, contactors, agents, authorized invitees, successors or assigns;
- the configuration, failure or malfunction of non-DQE equipment or systems;
- scheduled maintenance or planned enhancements or upgrades to the DQE network;
- DQE not being given reasonable access to the premises;
- Customer exceeding the maximum capacity of a port connection or any other rate limitation as set forth in the applicable Service Order; or
- a Force Majeure Event as defined in the Master Services Agreement.

7. THIRD-PARTY SERVICES. If Customer requests Services that require DQE to procure services from a Third-Party ("Third-Party Provider" or "Type II Provider") on behalf of Customer, DQE agrees to provide such Third-Party Services subject to the following to which Customer acknowledges and agrees: (a) the Third-Party Services will be provided by a Third-Party Provider; (b) the Third-Party Services will function and perform in accordance with the service level obligations provided by the Third-Party Provider to DQE (i.e., the standard DQE SLA does not apply); (c) any rights, remedies, outage credits, or other service-specific terms that the Customer may have or be entitled to under this Agreement are limited to the same terms that DQE has in place with the Third-Party Provider; (d) the costs for the Third-Party Services will be incorporated into the Service Fee and Installation Fee set forth in the applicable Service Order; (e) if DQE purchases Third-Party Services pursuant to Third-Party Provider's applicable tariff, Customer is responsible for any additional charges imposed on DQE; and (f) if the Customer cancels or terminates for its convenience, any Service which includes a Third-Party Service prior to the conclusion of the Service Term, then the Customer will pay any and all cancellation and/or early termination charges that DQE actually incurs for the cancellation or termination of such Third-Party Services, plus any charges remaining under this Agreement. Third-Party Providers may require Customer to provide, at Customer's sole cost and expense, conduit access and/or extension of demark to Customer's facility to enable installation of Third-Party Services.

8. WARRANTY AND LIMITATIONS. DQE warrants that during the Term, the Services will meet the specifications on the Customer Service Order. If the Services fail to meet such specifications, DQE will provide support and maintenance to Customer in accordance with the SLAs set forth herein.

Each SLA will be effective on the applicable Service Commencement Date, but credits will not apply until the first full calendar month in which a Service is provided. If the Services fail to meet the specifications on the Customer Service Order then Customer shall be entitled to remedies set forth in the applicable SLA.

EXCEPT AS SET FORTH HEREIN, THE CREDIT CALCULATIONS SET FORTH IN THE SLA SHALL BE CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY FAILURE OF THE SERVICES TO MEET THE SPECIFICATIONS. THE TOTAL AMOUNT OF CREDIT THAT WILL BE EXTENDED TO CUSTOMER AS A RESULT OF DQE'S FAILURE TO MEET THE SPECIFICATIONS SET FORTH IN THE SLA SHALL BE LIMITED TO 100% OF ONE MONTH'S RECURRING CHARGE IN ANY SINGLE MONTHLY BILLING PERIOD. EXCEPT AS SET FORTH IN THIS SECTION, DQE MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICES, EXPRESSED OR IMPLIED. DQE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. DQE EXPRESSLY DISCLAIMS ANY WARRANTY OF CONTINUOUS OR UNINTERRUPTED SERVICE.

If Customer is delinquent on any invoice, any SLA credits due to Customer shall be deducted from said delinquent amount. The application of credits does not waive Customer's obligation to pay any remaining balances or any future amounts under this Agreement.

9. **TERMINATION.** With respect to Wavelength Services only, if Customer has qualified for credits for any single service in excess of a total of sixty (60) days recurring charges in any continuous twelve (12) month period, following thirty (30) days advanced written notice, Customer may terminate the applicable Customer Service Order with no additional obligations. Qualified credits are documented via a DQE Network Operations Center Trouble Ticket. The termination right must be exercised within sixty (60) days of the event giving rise to it.

DARK FIBER

1. **SERVICE DESCRIPTION.** DQE dark fiber ("Fiber") is a lease of a quantity of dark fiber strands between two points (each a "Designated Facility") in a ring or point-to-point configuration as specified in an applicable Customer Service Order. No signal is provided on the Fiber by DQE.
2. **PROVISION OF FIBER.**
 - A. **Fiber Lease.** DQE shall provide, and Customer shall lease, the Fiber between the Demarcation Locations (as defined below) within the Designated Facilities, set forth on the applicable Customer Service Order. "Demarcation Locations" shall mean the closest practical location inside the Designated Facilities, not to exceed 50 feet from the point of fiber entrance to the Designated Facilities, for placement of DQE's dark fiber terminal. All rights, title, and interest in the Fiber at all times shall remain exclusively with DQE. Customer is not permitted to sublease the Fiber.
 - B. **Customer Access.** Customer shall provide access from the Demarcation Location of the Designated Facilities to the DQE fiber optic network. Customer shall be responsible for obtaining the license or similar rights to extend the in-house fiber from DQE's inside-the-building dark fiber terminal of the Designated Facilities. Customer shall use commercially reasonable efforts to provide DQE access to Designated Facilities at reasonable times and upon reasonable notice for purposes of performing maintenance to, and repair of, the Fiber.
 - C. **Route Specifications.** DQE shall specify, design and install the Fiber along the most efficient route available as to provide Customer connectivity in the most effective manner possible.
 - D. **Construction Completion Intervals.** Construction Completion Intervals (as specified on an applicable Customer Service Order) are pre-sales estimates only, based upon various factors, including (but not exclusive of) the permitting required to establish right of way for new construction (which is not within complete control of DQE). Because some of the factors are outside the control of DQE, the intervals are DQE's best estimate of completion timeframes, based upon past experience, but do not represent a firm commitment to meet specific delivery dates or timeframes.
3. **MAINTENANCE AND REPAIR.** DQE will maintain the Fiber twenty-four (24) hours a day, seven (7) days per week. All maintenance and repair of the Fiber and DQE Facilities shall be performed by or under the direction of DQE at DQE's sole cost and expense. All maintenance and repair of the Fiber shall be done in a professional and workmanlike manner. Customer shall not, nor shall it permit others to, rearrange, disconnect, remove, attempt to repair or otherwise access any of the facilities or equipment installed by DQE, except upon the written consent of DQE.
 - E. **Scheduled Maintenance.** DQE may temporarily interrupt Customer's use of the Fiber for scheduled maintenance of the Fiber. DQE shall work closely with the Customer to coordinate any outage or maintenance requests, initiated by either party, to ensure minimal network downtime. DQE will provide a minimum notification of fourteen (14) days prior to any scheduled outage. All scheduled maintenance shall be completed during the hours of 6pm to 8am ("Off-Hours"). If applicable, scheduled outages will affect only one side of the ring at a time and therefore will not result in total service interruption.

- F. **Outage Notification.** In the event that Customer becomes aware of a failure of the Fiber, Customer will contact DQE’s NOC. DQE will respond to Customer within one (1) hour and implement a detailed plan for restoration. If Customer receives no response within one (1) hour, Customer may use the escalation process provided to Customer.
 - G. **Emergency Repair.** DQE’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. DQE shall have its first maintenance employee at the site requiring a maintenance activity within four (4) hours from the time of alarm identification by DQE’s NOC or notification by Customer, whichever occurs first. Emergency maintenance is defined as any service-affecting situations requiring an immediate response. **DQE’s ability to make emergency repairs will be contingent upon DQE being granted access to work on the Fiber. DQE’s obligations to commence repair shall not commence until such time as all unsafe conditions have been addressed and access has been granted by emergency responders and the relevant power company.**
 - H. **Permanent Repair.** Within twenty-four (24) hours following completion of an emergency repair, DQE shall commence planning for permanent repair, notify Customer of its plans, and complete the permanent repair within the mutually agreed time.
4. **FIBER SPECIFICATIONS.** The Fiber will consist of dark single mode (SMF-28) fiber. The total Fiber loss is not to exceed the following manufacturer specifications from Corning.

A. Optical Fiber Specifications – Single mode Fiber

Parameter	Specification	Units
Maximum attenuation, at 1550nm (A1)	0.50	dB/km
Cladding diameter	125 ±3	um
Cutoff Wavelength	1250 ±100	nm
Zero dispersion wavelength	1310 ±12	nm
Maximum dispersion (at 1285-1330 nm)	3.5	ps/(nm km)

B. Splice Loss

Splice loss on DQE cables will average less than or equal to 0.3 dB for all splices DQE makes under this Agreement. The 0.3 dB splice average will only apply to splices between cables of identical physical and optical properties (i.e. core and cladding dimensions, refractive index and optical loss characteristics).

C. End-To-End Attenuation Acceptance Criteria

The cable system will be tested at the wavelength specified for each cable type as follows unless otherwise stated in the applicable Customer Service Order. For single mode Fiber (1550 nm), the end-to-end attenuation acceptance criteria will be based on the following formula:

$$\text{Maximum acceptable end-to-end attenuation} = (A \times L) + (0.3 \times N_{sp}) + C$$

where:

A = Maximum attenuation at wavelength (A1) as specified in section A above.

L = Optical length of the cable in kilometers (km).

N_{sp} = Number of fiber splices in the cable system.

C = Connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.3 dB, comprised of 1.0 dB connector loss and 0.3 dB splice loss (pigtail to OSP cable splice).

MANAGED WI-FI

1. **SERVICE DESCRIPTION.** DQE will (i) install the DQE Equipment, and (ii) provide support and monitoring services for the Customer's managed Wi-Fi network (the "Wi-Fi Service") to applicable service location for use solely by the Customer and Customer's guests and visitors that patronize the Service Location ("End Users"). The Wi-Fi will be branded as Customer's Wi-Fi service. Customer acknowledges that the bandwidth and coverage offered by the Wi-Fi Service is not guaranteed, as Wi-Fi Service coverage may vary due to the use of unlicensed spectrum, power supply and equipment mounting location. The Wi-Fi Service is subject to change from time to time to reflect changes in features and technology offered by DQE and applicable laws.
2. **USER ENVIRONMENT.** As part of the Wi-Fi Service, DQE will create and maintain a pre-authentication user environment which, to the extent requested by Customer, will include a landing page requiring an End User to accept terms and conditions Customer may desire to impose as a condition of accessing the Wi-Fi Service. DQE shall update and make changes to the End User environment and landing page, as reasonably requested by Customer.
3. **MAINTENANCE.** DQE shall maintain the Wi-Fi Network as necessary, including managing and modifying (as reasonably requested by Customer) the configuration of equipment and devices, monitoring of the Wi-Fi Network, and, the maintenance, repair, or replacement of DQE Equipment. DQE's obligation to maintain the DQE Equipment shall be limited to:
 - Troubleshooting and remote repair via the DQE NOC; and
 - Site visits by a technician when determined to be appropriate by DQE; provided, that, Customer acknowledges and agrees that it shall be responsible for the payment of all reasonable service charges for visits by DQE technicians.
 - On-site repair or replacement of DQE Equipment as determined necessary by DQE.
4. **MONITORING.** DQE will provide real-time, remote network monitoring to assure that the Wi-Fi is active. DQE will proactively monitor the Wi-Fi Network and will use commercially reasonable efforts to proactively remedy identified issues with Wi-Fi Network.
5. **ONLINE PORTAL.** DQE will provide DQE will provide Customer with an online portal for live monitoring the Wi-Fi Network, including but not limited to, the routers, switches, and access points. DQE will have access to the standard information provided via the online portal. DQE provides no representations or warranties with respect to the portal beyond those provided by the portal operator to its users.
6. **CUSTOMER OBLIGATIONS.** Customer agrees to the following:
 - Customer at their own expense must provide, install, and maintain any required router, firewall and other ancillary equipment/software.
 - Customer must report any detected Service or network failure as soon as possible and provide any requested information to the DQE NOC and support personnel at 877-263-8638.

DDoS MITIGATION

1. **SERVICE DESCRIPTION.** “DDoS Mitigation Service” is a network-based traffic analysis service for mitigating the impact of Distributed Denial of Service (DDoS) Attacks for DQE Customers. DQE will proactively monitor a Customer’s internet traffic and assess for a possible DDoS Attack. If DQE identifies a possible DDoS Attack, DQE will proactively contact the Customer to discuss commencing DDoS Mitigation Service. Customer may also contact the DQE NOC to report a DDoS Attack. After DQE and the Customer collectively agree that a DDoS Attack is taking place, DQE will commence the DDoS Mitigation Service. When system and/or network capacity is exceeded, DQE reserves the right to pass through the Customer’s IP traffic without scrubbing the IP traffic. Post-mitigation, DQE will route the Customer’s traffic back to standard traffic flow. Once traffic is restored to standard traffic flow, the DDoS Mitigation Service shall be deemed completed and closed.
2. **DEFINITIONS.** The following definitions shall apply to DDoS Mitigation Service:
 - A. **Abuse** – Improper or illegal activity that has a deleterious effect on either DQE Communications network or other DQE customer services is classified as Abuse. The DQE Acceptable Use Policy published and periodically updated on our web site provides a more detailed listing of traffic and activity that is classified as Abuse.
 - B. **Commencement Date** – The date upon which the Service Activation Notice (“SAN”) is delivered to Customer or the Emergency Order was signed and DDoS Mitigation Service began.
 - C. **Customer Data** – Any information held or maintained by Customer on their systems or network or information stored in off-premise services.
 - D. **Customer Contact Center (CCC)** – The customer web application portal that DQE maintains to provide information about service and tickets to customers.
 - E. **Distributed Denial of Service (“DDoS”) Attack** – An attempt(s) to make an online service/server unavailable by overwhelming it with traffic from multiple sources.
 - F. **Endpoints** – Customer controlled network device(s) that is receiving traffic on the internet circuit.
 - G. **Excused Outage** – An “Excused Outage” is an outage caused by: (a) the configuration, failure or malfunction of non-DQE equipment or systems (including any products introduced as part of a fix or modification agreed to between the Parties); (b) scheduled maintenance or planned enhancements or upgrades to the DQE network; (c) DQE not being given reasonable access to the premises; (d) Customer exceeding the maximum capacity of a port connection or any other rate limitation as set forth in the applicable Service Order; (e) documented delays resulting from Customer’s failure to respond to troubleshooting requests or other reasonably requests from DQE; or (f) a Force Majeure Event.
 - H. **Non-Attack Incident Fee (NAIF)** – The fee for use of the DDoS Mitigation Service during a Non-Attack Incident. A “Non-Attack Incident” is when the customer incorrectly or falsely claims a DDoS Attack is underway. This fee shall be 25% of the monthly MRC per Non-Attack Incident.

- I. **Per Incident Fee** – Should Customer have more than 25 Incidents in a 12 month period, DQE reserves the right to charge a one-time fee equal to 50% of the Customer’s MRC per each additional Incident. An Incident is defined as when the DQE NOC and Customer agree to open a NOC ticket for this Service.

3. CUSTOMER OBLIGATIONS.

- A. **License.** Customer acknowledges that operation and performance of the DDoS Mitigation Service involves repeated filtering of traffic to the Endpoint and Customer hereby expressly consents to the same. Customer hereby grants DQE a non-exclusive, non-transferrable, and royalty-free license to access the Endpoint and the internet traffic flowing thereto and any applications contained therein for the sole purpose of performing the DDoS Mitigation Service.
- B. **Contacts.** Customer must provide a list of employees (title, name, mobile phone number and email) to DQE and keep it updated continuously via the CCC portal on who may report a possible DDoS Attack and approve DDoS Mitigation Service.
- C. **Acknowledgements.** The Customer accepts and agrees that the Service shall be provided through common and shared infrastructure and should multiple DQE Customer DDoS Attacks occur simultaneously DQE, in its sole discretion, reserves the right to prioritize the order in which Customer’s receive DDoS Mitigation Service. Customer acknowledges and agrees that the DDoS Mitigation Service does not prevent or eliminate all DDoS Attacks. Customer acknowledges and agrees that DQE may use various tools in its sole discretion to protect its network, including but not limited to “black holing” traffic, suspension of Internet service, and/or termination of Internet service. The Customer is responsible for the security of managing network components of customer data environment such as routers, firewalls, databases, physical security, or servers.
- D. **Representations and Warranties.** Customer represents and warrants that Customer has all right, title and interest or is the licensee with right to use and/or access all of the Endpoints, applications and/or content Customer delivers to DQE to perform the DDoS Mitigation Service. Customer represents and warrants that Customer has the right to grant DQE the access rights and licenses set forth herein and has obtained or will obtain prior to DQE’s performance of DDoS Mitigation Service all rights, authorizations or permissions required for DQE to perform the DDoS Mitigation Service.
- E. **Commencement of DDoS Attack.** Customer must notify the NOC in the event Customer experiences, or anticipates, a DDoS Attack. Upon receipt of notification, the NOC will open a trouble ticket and commence monitoring. The Customer shall notify DQE immediately in the event of a problem or disruption, but not later than 2 hours after the event has started. The Customer must authorize DQE to begin DDoS Mitigation Service. Customer may opt instead to pre-authorize DQE to monitor and begin DDoS Mitigation Services under specific parameters. Such pre-authorization must occur in writing. During a DDoS Attack, Customer shall:
 - Have a technical contact available during the entirety of an open trouble ticket to enable Customer to interact with DQE’s support team;
 - Ensure other mitigation equipment is disabled within the Customer’s environment; and
 - cooperate with DQE and any requests as needed.

DQE reserves the right to stop DDoS Mitigation Service at its sole discretion when a DDoS Attack has not occurred or has ceased.

4. SERVICE LEVEL REQUIREMENTS. DQE's Service Level (SLA) for mitigation response time is within thirty (30) minutes of the Customer reporting a DDoS Attack and DQE opening a NOC trouble ticket pursuant to which Customer authorized DQE to begin DDoS Mitigation Service.

A. Response Time. In the event that the DQE fails to initiate a DDoS Mitigation Service response within 30 minutes after a NOC ticket is opened and Customer authorized DDoS Mitigation Service, and such failure affects Customer's ability to use DDoS Mitigation Service while under attack, the following Service Level Credits apply:

DQE Response Time in Minutes	Service Level Credit
0-30	N/A
31-90	10%
91-120	20%
121-240	30%
241-480	40%
481+	50%

B. Service Level Credits. In the event that DQE does not achieve a particular Service Level in a given month, for reasons other than an Excused Outage (as defined below), DQE will issue a credit to Customer as set forth in the applicable service level table above, upon Customer's request ("Service Level Credit"). To request a credit, Customer must contact DQE's Customer Service by delivering a written request within thirty (30) days of the end of the month for which a credit is requested. Customer's total credits in any one (1) month shall not exceed one (1) month's DDoS MRC for the affected Service for that month and cannot be applied to MRC for any other services obtained through DQE. If Customer is delinquent on any invoice, any SLA credits due to Customer shall be deducted from said delinquent amount. The application of credits does not waive Customer's obligation to pay any remaining balances or any future amounts under this Service Schedule.

5. NETWORK MANAGEMENT. Use of the DDoS Mitigation Service in a manner that, in DQE's reasonable determination, directly or indirectly produces or threatens to produce a material negative effect on the DQE's network or that materially interferes with the use of the DDoS Mitigation Service or DQE's network by other Customers or authorized users, including, without limitation, overloading servers or causing portions of DQE's network to be blocked; and altering any aspect of the DDoS Mitigation Service where such is not authorized by DQE; enables DQE to take any action at its sole discretion to preserve the integrity and/or operations of DQE's network.

6. MODIFICATIONS, TERMINATION AND SUSPENSION.

A. Modifications. A Customer's DDoS Mitigation Service must coincide with the size of the Customer's purchased Internet bandwidth. If a Customer's Internet service bandwidth is modified (either upgraded or downgraded), Customer's DDoS Mitigation Service bandwidth will be automatically upgraded or downgraded to match. Any increase or decrease in price will become effective on the next available billing cycle and will be prorated.

B. Suspension. DQE may suspend provision of the DDoS Mitigation Service and/or Internet services if, in the DQE's reasonable determination, an Abuse occurs. Such suspension shall remain in effect until Customer corrects the applicable Abuse. In the event that, in DQE's reasonable determination, an Abuse is critically impacting, or threatens to critically impact, the DQE's network or servers, DQE may suspend provision of the DDoS Mitigation Service and/or Internet service, as applicable, immediately and without prior notice. In the event that an Abuse is not critically impacting the DQE network or threatening to do so, DQE shall give Customer prior notice of any suspension. Such suspension shall remain in effect until Customer corrects the applicable Abuse.

C. Termination. DQE may terminate the Services performed under any one or more Customer Service Orders hereunder for convenience by giving at least one hundred and eighty (180) days prior written notice to the Customer. If Customer fails to correct any Abuse after notice (whether written or oral) from DQE, DQE may, in its sole discretion, terminate its provision of DDoS Mitigation Service and Internet service for breach without any liability or obligation to Customer for any DDoS Mitigation Service suspended or terminated. If it is determined that the Abuse was intentional on Customer's behalf, then DQE in its sole discretion shall charge early termination fees and liquidated damages.

7. WARRANTY AND LIMITATIONS. DQE warrants that the Service will meet the specifications on the Customer Service Order. If the Service fail to meet such specifications, DQE will provide support and maintenance to Customer in accordance with the SLAs set forth herein. The SLA will be effective on the applicable Commencement Date, but credits will not apply until the first full calendar month in which a Service is provided. If the Service fails to meet the specifications on the Customer Service Order, then Customer shall be entitled to remedies set forth in the applicable SLA. DQE will not be liable for any: (i) disruptions in the security of the Customer network, system or equipment; (2) loss, corruption, or theft of Customer Data during the use of the Service; or (iii) loss or damage in connection with or arising out of the interruption or loss or use of the Service. NEITHER DQE NOR DQE'S THIRD PARTY SUPPLIERS WILL BE LIABLE FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, OR LOST DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. DQE does not warrant that the Service will operate error free, uninterrupted or fail-safe; that DQE will correct all product or Service errors, or that the Service will lead to certain results. Any advice or information provided by the DQE or its providers or agents cannot represent guarantees.

EXCEPT AS SET FORTH HEREIN, THE CREDIT CALCULATIONS SET FORTH IN THE SLA SHALL BE CUSTOMER'S SOLE REMEDY IN THE EVENT OF ANY FAILURE OF THE SERVICE TO MEET THE SPECIFICATIONS. THE TOTAL AMOUNT OF CREDIT THAT WILL BE EXTENDED TO CUSTOMER AS A RESULT OF DQE'S FAILURE TO MEET THE SPECIFICATIONS SET FORTH IN THE SLA SHALL BE LIMITED TO 100% OF ONE MONTH'S RECURRING CHARGE IN ANY SINGLE MONTHLY BILLING PERIOD. EXCEPT AS SET FORTH IN THIS SECTION, DQE MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICE, EXPRESSED OR IMPLIED. DQE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. DQE EXPRESSLY DISCLAIMS ANY WARRANTY OF CONTINUOUS OR UNINTERRUPTED SERVICE.

DQE EQUIPMENT

1. **SERVICE DESCRIPTION.** DQE will provide certain equipment to Customer for a monthly recurring fee as set forth in the applicable Customer Service Order (“DQE Equipment”). The DQE Equipment may include, without limitation, Network Interface Devices (NID), routers, Wi-Fi Access Points, and any included software installed or included to operate, monitor or configure the DQE Equipment. As set forth in the applicable Customer Service Order, DQE will provide installation, monitoring and maintenance of the DQE Equipment.
2. **CUSTOMER OBLIGATIONS.** Customer agrees to the following:
 - Customer is responsible for providing a safe operating environment for the DQE Equipment in a climate-controlled area free from excessive dust, vibration or humidity.
 - Customer is responsible for providing adequate electrical power for operation of the DQE Equipment.
 - Customer must report any detected DQE Equipment failure as soon as possible and provide any requested information to the DQE NOC and support personnel at 877-263-8638.
 - Customer is responsible for 24x7 security of the W-Fi Equipment and its timely return at termination of the Service.
 - Customer shall not access, alter or tamper with the DQE Equipment in any manner which would void applicable manufacturer’s warranties.
 - Customer shall return the DQE Equipment in reasonable condition (wear and tear accepted upon the termination of Services. DQE reserves the right to invoice the customer for the replacement cost of any DQE Equipment which is not returned.
3. **MAINTENANCE.** DQE shall maintain the DQE Equipment as necessary, including managing and modifying (as reasonably requested by Customer) the configuration of DQE Equipment and, the maintenance, repair, or replacement of DQE Equipment. DQE’s obligation to maintain the DQE Equipment shall be limited to:
 - Troubleshooting and remote repair via the DQE NOC; and
 - Site visits by a technician when determined to be appropriate by DQE; provided, that, Customer acknowledges and agrees that it shall be responsible for the payment of all reasonable service charges for visits by DQE technicians.
 - On-site repair or replacement of DQE Equipment as determined necessary by DQE.
4. **WARRANTY AND LIMITATIONS.** DQE warrants that during the Term, the Services and the DQE Equipment will meet the specifications on the Customer Service Order. DQE makes no representation or guaranty of the speed and availability of the Service. Many factors affect Internet speed, and the actual speed of the Service may vary accordingly. However, DQE is committed to providing high quality service and will use commercially reasonable efforts to provide the Service to Customer 24 hours a day, 7 days per week. The Service may be unavailable from time-to-time

either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond DQE's reasonable control. Temporary service interruptions or outages for such reasons, as well as service interruptions or outages caused by Customer, its agents and employees, Customer equipment, or by a Force Majeure Event shall not constitute a failure by DQE to perform its obligations under this Service Schedule.

EXCEPT AS SET FORTH IN THIS SECTION, THE DQE EQUIPMENT AND RELATED SUPPORT ARE PROVIDED "AS IS". DQE DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AS TO THE DQE EQUIPMENT. DQE, ITS LICENSORS, VENDORS OR CONTRACTORS DO NOT WARRANT THAT THE ROUTER EQUIPMENT WILL OPERATED UNINTERRUPTED OR ERROR-FREE. DQE EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY ARISING OUT OF THE DELIVERY, INSTALLATION, SUPPORT OR USE OF ANY SOFTWARE. DQE ASSUMES NO OBLIGATION TO CORRECT ERRORS IN ANY SOFTWARE AND CUSTOMER UNDERSTANDS AND ACCEPTS ALL RESPONSIBILITY FOR ANY SOFTWARE MEETING CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

- 5. THIRD-PARTY SERVICES AND SOFTWARE.** DQE may use third party equipment and services (including the DQE Equipment) in the performance of its obligations. DQE will provide, upon request, copies of the applicable third-party warranties, to the extent they are made available to DQE. DQE shall pass through to Customer, to the extent permitted, all third-party warranties, and will provide such assistance as may reasonably be required to pursue warranty claims with third parties. In the case of third-party services, the third party will be responsible for providing the service and Customer must look solely to the third party for any loss, claims or damages arising from or related to the provision of third-party services.

WIRELESS ACCESS

1. **SERVICE DESCRIPTION.** DQE “Wireless Access Service” is an LTE wireless internet backup service subject to availability of third-party service provider. The Wireless Access Service acts as a failover to provide backup so the Customer may continue to transmit data via LTE wireless broadband communications. The Wireless Access Service provides Customer with a LTE wireless link utilizing cellular network services furnished by one or more participating wireless carriers via DQE Equipment including wireless M2M LTE equipment and associated SIM card (“Wireless Equipment”). The Service will be available for a fixed monthly charge plus monthly usage charges. Customer shall be responsible for all actual usage charges for any given month. This Service includes dynamic IP addresses. Static IP addresses are not available for this Service.
2. **DEFINITIONS.** The following definitions shall apply to Wireless Access Service:
 - A. **Authorized Contact** – A representative authorized by Customer to request service changes using procedures outlined below.
 - B. **Customer Contact Center (CCC)** – The customer web application portal that DQE maintains to provide information about service and tickets to customers.
 - C. **Greater Pittsburgh Region** – DQE fiber connected locations within the following counties: Pennsylvania -- Allegheny, Armstrong, Beaver, Blair, Butler, Fayette, Greene, Indiana, Lawrence, Mercer, Somerset, Washington and Westmoreland; Maryland – Marion and Monongalia.
3. **USAGE CHARGES.** Monthly usage charges will be calculated based on data consumed (used) in addition to the MRC. Within any particular monthly billing period, Customer may be required to provide authorization to move up to a new usage interval and use additional data. DQE reserves the right to cap Customer’s data usage, in its sole discretion, and DQE may require a Customer to provide a deposit prior to the availability of additional data usage. Data intervals are an approximate usage range and DQE reserves the right to change data interval ranges, in its sole discretion. Calculation of a Customer’s data usage will restart for each monthly billing period.
4. **DELIVERY AND ACCEPTANCE.** Wireless Equipment will be delivered to the Customer location in the Customer Service Order. For Customer Service Orders within the Greater Pittsburgh Region, DQE will deliver and install the Wireless Equipment. For Customer Service Orders outside of the Greater Pittsburgh Region, DQE will mail or deliver the Wireless Equipment to the Customer location and Customer shall be responsible for installation. For Customer Service Orders outside of the Greater Pittsburgh Region, installation by a DQE subcontractor may be available for an additional one-time installation charge. Service shall be deemed accepted and all fees will accrue beginning upon the date the Wireless Equipment is turned on and is connected to the Internet (the “Service Commencement Date”). For Wireless Equipment delivered to Customer site but not connected to the internet within seven (7) days from date of delivery, DQE shall start billing for the Service upon the eighth (8th) day from date of delivery.
5. **CUSTOMER OBLIGATIONS.**

- A. Limitations.** Customer shall use the Wireless Equipment solely in conjunction with DQE Wireless Access Service at the location specified and only for transmission of information within the continental United States. The Wireless Access Service is to be used exclusively for low bandwidth communications. Customer shall not use the Service for web hosting, video or audio streaming, hosting of computer applications, support of emergency services, support of remote medical monitoring, support of aerial manned vehicles, alarm calls, routines that generate excessive amounts of data traffic, or traffic that adversely affects people or systems (including DDoS attacks against other networks). Customer shall not use regeneration equipment in conjunction with this Service. DQE or third-party service provider reserves the right to throttle, disengage service, or cap data usage when it negatively impacts the network.
- B. Monitor and manage use of the Service.** The Service shall be used solely as a backup to Customer's primary internet service. The Service shall not be used when there is not an actual service interruption of the primary service. Customer is responsible for all charges related to use of Service, whether accidental or intentional.
- C. Backup of Files.** Maintain a backup system for the duplication of all electronic files and documents. DQE is not responsible for the backup of Customer's electronic files and documents, nor liable for any data loss during performance of the Service.
- D. Maintain its own privacy and security controls for all content.** Customer shall be responsible for ownership and control of all content transmitted through the Service. Neither DQE, nor its underlying third-party supplier, shall be responsible for privacy or security of any transmission. Any unauthorized access or interception of data is solely the responsibility of Customer.
- 6. EQUIPMENT.** Customer acknowledges the following:
- A. Wireless Equipment.** Equipment For Customers within the Greater Pittsburgh Region, DQE will replace Wireless Equipment in person upon availability. For Customers outside of the Greater Pittsburgh Region, DQE shall mail replacement equipment to Customer upon availability. Customer shall return the non-working equipment to DQE. Customer is obligated to comply with all documentation and manufacturer's instructions that accompany such equipment and all software end user license agreements, as strict adherence to technical documentation is required for warranty pass-through. Any violation of this obligation be will considered a default pursuant to the terms of the Agreement. If equipment (including any SIM card(s)) cannot be recovered by DQE, or if equipment is damaged beyond the ordinary wear and tear resulting from its use, at the sole discretion of DQE, Customer will be liable to DQE for either the replacement value of the equipment or the cost for repair. Customer shall be liable for all charges associated with the equipment, SIM card and/or internet usage until returned to DQE.
- B. Customer Equipment.** DQE will not provide service or support for any Customer Equipment. If, after diagnosing a problem with the Service, DQE determines that Customer Equipment is the cause of the problem, Customer will be responsible for servicing such equipment, hardware or software and DQE may charge a consulting fee for the non-DQE equipment related trouble call.
- 7. SERVICE AND SUPPORT.** DQE will provide service and support for the Wireless Equipment. After Service activation, Customer shall be required to contact the DQE NOC with any Customer Service

requests. Customer shall ensure that DQE has access to Customer site(s) during service requests. If site access is not available, Customer's Authorized Contact must notify DQE of such during initial communication with the DQE NOC.

2. **Wireless Equipment Administration.** DQE will retain all administrator rights and change privileges for DQE provided hardware and software delivered under the Service. Customer shall not have administrator privileges for any DQE provided equipment. DQE retains exclusive rights to manage or change all resources used in provision of the Service, including but not limited to the underlying wireless carriers, equipment, and configurations.
3. **Authorizations.** In the course of providing Service to Customer, DQE may require Customer account information from third party vendors that Customer contracts with in conjunction with the DQE Wireless Access Service. Customer grants DQE permission to contact such third parties on behalf of Customer when DQE requires equipment or network related information from the third parties. DQE shall solely determine when and if DQE contacts a Customer's third party vendor.

4. **WARRANTY AND LIMITATIONS.**

A. DQE Warranty. DQE warrants that the Service will meet the specifications on the Customer Service Order. DQE makes no representation or guaranty of the availability or quality of the Service. Many factors affect wireless Internet service, and the actual availability or quality of the Service may vary accordingly. However, DQE is committed to providing high quality service and will use commercially reasonable efforts to provide the Service to Customer as specified. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond DQE's reasonable control. Temporary service interruptions or outages for such reasons, as well as service interruptions or outages caused by Customer, its agents and employees, Customer Equipment, or by a Force Majeure Event shall not constitute a failure by DQE to perform its obligations under this Service Schedule.

EXCEPT AS SET FORTH IN THIS SECTION, DQE MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE SERVICES, EXPRESS OR IMPLIED. THE SERVICE IS PROVIDED "AS IS" AND IN NO EVENT SHALL DQE BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF DATA, OR PROFITS, ARISING OUT OF , OR IN CONNECTION WITH , THIS AGREEMENT OR THE USE OF OR PERFORMANCE OF THE SERVICE, WHETHER IN AN ACTION OF CONTRACT OR TORT INCLUDING BUT NOT LIMITED TO NEGLIGENCE. DQE EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DQE EXPRESSLY DISCLAIMS ANY WARRANTY OF CONTINUOUS OR UNINTERRUPTED SERVICE.

B. Limitation of Third-Party Service. The quality, service, and terms of service are subject to the third party agreements DQE holds with underlying data carrier (inclusive of roaming, service experience, and service footprint limitations whereby additional charges may occur). In order to maintain the Wireless Access Service, Customer acknowledges that DQE may change the third-party service providers, Wireless Equipment, or applicable software, at its discretion at any time. Such change may interrupt the Service or result in additional charges to Customer. DQE may change pricing or any other applicable Service term in this Agreement at any time. DQE will use commercially reasonable methods to inform Customer in advance of any such changes. Any continued use of the Service after notice of such change is automatically considered acceptance of such modified terms.

COLOCATION

1. **SERVICE DESCRIPTION.** “Colocation” is a non-exclusive license for Customer to utilize rack or floor space, with associated power and cooling, for the location of Customer’s equipment (“Colocated Equipment”) in the designated space within a DQE network facility (Colocation Space”).
2. **CUSTOMER EQUIPMENT.** As set for the in the applicable Customer Service Order, commencing on the installation date set forth in the Customer Service Order (“Requested Service Date”), DQE shall permit Customer to place the Colocated Equipment in the Colocation Space. Customer’s right to occupy the Colocation Space shall commence on the Requested Service Date. The rights granted pursuant to this Colocation are subject to the terms and conditions of any underlying lease or other superior right by which DQE has acquired its interest in the Colocation Space. In the event, however, that this Agreement is construed by a DQE lessor to grant property rights to any Colocation Space, then Customer agrees to either (i) enter into an agreement approved by such DQE lessor, or (ii) upon request of DQE, to immediately remove the Colocated Equipment from the Colocation Space. Customer shall be responsible for paying any fees or charges imposed by the lessor as a condition of granting its consent.
3. **USE OF COLOCATION SPACE.**
 - A. **License to Occupy; Use of Space.** DQE grants Customer a nonexclusive limited license to occupy the Colocation Space. Customer agrees that it is being granted only a license to occupy the Colocation Space and not a real property interest in the Colocation Space. Customer’s occupancy of the Colocation Space will serve as Customer’s acceptance of the Colocation Space. Customer’s use of the Colocation Space throughout the Service Term is contingent upon DQE continuing to own or lease the premises where the Colocation Space is located. Customer agrees to use the Colocation Space only to install, maintain, and operate the Colocated Equipment. Customer is solely responsible for design, engineering, testing, installation, operation, performance, monitoring, maintenance, and repair of the Colocated Equipment in the Colocation Space.
 - B. **Access.** Only individuals that Customer has designated to DQE in writing as authorized Customer employees, representatives or contractors (“Customer Representatives”) shall have access to the Colocated Equipment. DQE has the right, in its sole discretion, to require background checks of Customer Representatives be provided to DQE prior to access to the Colocated Equipment or to require that Customer Representatives be escorted by DQE representatives.
 - C. **Limitations on Use.**
 - i. Customer acknowledges that DQE is providing unmanned space. The Colocation Space cannot be used to house people or be used as an office, network operations center or storage facility. Customer may not provide or make available any portion of the Colocation Space to any third party, without DQE’s written consent.
 - ii. Customer Representatives shall: not smoke in the Colocation Space or on DQE’s premises; comply with DQE’s policies and practices regarding fire, safety, and security;

and comply with any other rules of DQE, which may be revised from time to time. Customer shall not block access to any exits, fire alarm boxes or fire-extinguishing equipment.

- iii. Customer shall not store any paper products or other combustible/flammable materials of any kind on the Colocation Space and shall keep the Colocation Space free at all times of debris, paper, cardboard, packaging materials and other refuse by placing such items in containers provided or in a designated area for removal. Equipment or supplies are not permitted to sit on the floor of the facility, cage floor or on the ventilated tiles. All open floor space shall remain open and not used for storage of any items.
 - iv. Customer shall not bring any of the following materials into DQE premises: (i) hazardous materials; (ii) alcohol, illegal drugs, and other intoxicants; (iii) explosives; (iv) weapons; (v) photographic or recording equipment of any kind; (vi) electro-magnetic devices that could interfere with computer and telecommunications equipment; or (vii) radioactive materials.
 - v. Customer shall be permitted to service or remove all or portions of the Colocated Equipment unless such action would have an adverse impact on proper operations of DQE or would adversely impact other customers utilizing the DQE's network.
- D. Emergencies.** If DQE reasonably believes that, due to the condition of the Colocated Equipment, there is an immediate or imminent threat to (a) the safety or health of individuals, (b) the physical integrity or functioning of DQE's or Customer's facilities or (c) DQE's ability to meet any obligations, DQE may perform such limited corrective work in the Colocation Space as may be necessary to prevent or mitigate against such threatened injury. When an emergency situation exists such that advance notice and coordination are not practicable, either Party may perform corrective work without first giving prior notice to the other Party but shall promptly notify the other Party of the corrective work performed. Customer shall bear all expenses arising out of or in connection with emergency repairs of the Colocated Equipment and the Colocation Space necessitated by the acts or omissions of Customer.
- E. Relocation.** DQE shall have the right upon at least thirty (30) days prior written notice to Customer to relocate the Colocated Equipment provided that in such event DQE shall bear the costs of relocating the same and the site of relocation (the "Relocation Site") shall afford comparable environmental conditions for, and accessibility to, the Colocated Equipment. In the event of an emergency that threatens the safety of property or persons, DQE may relocate the Colocated Equipment without providing any notice to Customer as the circumstances may warrant. In all circumstances of relocation, Customer shall have the right to perform such relocation at its sole cost and risk. Upon any such relocation, the Relocation Site will be deemed to be the "Colocation Space" under this Agreement, and the Parties acknowledge and agree that the applicable Customer Service Order will automatically be deemed amended to provide for the Relocation Site.

4. COLOCATED EQUIPMENT.

- A. Installation and Removal of Colocated Equipment.** Customer shall arrange for delivery of each unit of Colocated Equipment to the Colocation Space at Customer's expense. Customer shall provide DQE with no less than one (1) week prior written notice of the actual delivery date. Unless otherwise agreed in writing, Customer shall install the Colocated Equipment at the

Colocation Space and shall be responsible for any necessary cabling from the junction panel provided by DQE to the Colocated Equipment. Customer may not install any equipment at the Colocation Space, other than Colocated Equipment, without DQE's prior written approval. Customer shall provide DQE with written notification two (2) days before Customer removes any Colocated Equipment and such removal shall be subject to DQE's verification that there are no outstanding charges due and payable by Customer to DQE.

- B. No Interference.** The Colocated Equipment shall not interfere or impair any service offered by DQE or any other Customer located on the premises where the Colocation Space is located. If DQE determines that the Colocated Equipment materially interferes with or impairs any other service or equipment, Customer will be notified and agrees to cooperate with DQE to take corrective action within twenty-four (24) hours. If after twenty-four (24) hours the problems persist, DQE shall have the right to correct the problem at Customer's expense, and if it so chooses, disconnect electrical power or remove network connectivity to Customer, Customer agrees that DQE shall not be liable for any damages arising from such action.
- C. Labeling.** Customer shall identify and label all Colocated Equipment and provide a written list of emergency contacts with telephone numbers to DQE.
- 5. ELECTRICITY.** DQE shall use commercially reasonable efforts to make available to Customer, AC electric capacity at a level not less than the commitment levels described in any applicable Customer Service Orders. Customer shall pay DQE, as additional Service Fees, on a monthly basis, for electricity service as set forth in the Customer Service Order(s). Customer shall be solely responsible, at Customer's sole cost and expense, for the installation of all power circuits and rack grounding to the base building grounding grid system required in order to deliver the electricity to the Colocation Space and to distribute it therein. Upon DQE's approval of Customer's request for the installation of electrical services to the Colocation Space, the designated electrical contractor, as approved by DQE, shall perform the tap-in to the building's electrical system located at the remote power panel at Customer's sole cost and expense. Customer covenants that Customer's consumption of electrical energy at the Colocation Space, which consumption shall be deemed to include both the electrical energy by each circuit in the Colocation Space as well as the electrical energy required to cool the heat generated thereby (the "Colocation Space Consumption"), shall not at any time exceed the capacity of any of the electrical facilities and installations in or otherwise serving or being used in the Colocation Space. Customer shall, upon written notice from DQE, promptly cease the use of any of Customer's electrical equipment which DQE believes will cause Customer to exceed such capacity. If, within twenty-four (24) hours of receiving such a notice from DQE, Customer shall fail to reduce its Colocation Space Consumption to a level that complies with the terms of this Section, DQE shall have the right to disconnect power to the applicable circuit. Any additional feeders, risers, electrical facilities and other such installations required for electric service to the Colocation Space will require approval by DQE and an amendment to the Customer Service Order executed by both Parties hereto.
- 6. REMOVAL UPON TERMINATION.** Within thirty (30) days after termination or expiration of the Service Term, Customer will, at its sole cost and expense, remove all Colocated Equipment from the Colocation Space and restore the Colocation Space to its previous condition, normal wear and tear excepted. If Customer fails to remove such Colocated Equipment within the specified period, DQE shall have the right to remove such equipment at Customer's sole cost and expense and without any liability on the part of DQE for damage to such equipment.

ACCEPTABLE USE POLICY

- 1. POLICY DESCRIPTION.** We have established this Acceptable Use Policy (this “Policy”) in order to protect our services and networks and the Internet community as a whole, from improper or illegal activity. Pursuant to this Policy, we reserve the right to take certain preventative or corrective actions.

As our customer, you and your users (employees and guests) may access the Internet through some of our services. The Internet provides a means for free and open discussion and dissemination of information. However, its openness makes it vulnerable to abuse. Because the information that you and your users create is carried over our networks and may reach a large number of persons, including both users and nonusers of our services, improper or illegal use of our services may negatively affect those other persons and may therefore harm our goodwill, business reputation, and operations. Pursuant to this Policy, we reserve the right to take certain preventative or corrective actions.

- 2. REVISIONS AND CUSTOMER AGREEMENTS:** This Policy may be revised from time-to-time. Your use of our services, after changes to the Policy, will constitute your acceptance of any new or additional terms of this Policy that result from those changes. Your use of our services is subject to the terms and conditions of any agreements entered into between you and us. The Policy is incorporated into such agreements by reference.
- 3. PROHIBITED ACTIVITIES.** You (and your users) violate this Policy and you violate your service agreement when you or your users engage in any of the following prohibited activities:
 - A. Spam and Facilitating Activities.** Sending unsolicited bulk and/or commercial messages over the Internet (“spam”), maintaining an open SMTP relay, or receiving responses to spam. Spam associated with our network is harmful because of its negative impact on consumer and industry attitudes toward us and because it can overload networks and disrupt service to our other customers and their users. When a complaint of spamming is received, we reserve the right to determine, in our sole discretion, whether or not an e-mail is spam based on whether or not the recipient list was derived from an “opt-in” e-mail list.
 - B. E-Mail Relay.** Any use of another person’s electronic mail server to relay e-mail without express permission from the other person.
 - C. Forging of Headers.** Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message or otherwise attempting to fraudulently conceal, forge, or otherwise falsify a sender’s identity, or injecting false data into the Internet, for instance in the form of bad routing information (including but not limited to the announcing of networks owned by someone else or reserved by the Internet Assigned Number Authority) or incorrect DNS information.
 - D. Viruses, Worms, Trojan Horses, or Other Destructive Activities.** Distributing viruses, worms, Trojan horses, or engaging in ping, flooding, mail bombing, or denial of service attacks, or distributing information facilitating the creation, distribution or engaging in any of the above. Destructive activities include any activity that has the effect of disrupting the use of or

interfering with the ability of others to use effectively our networks or any connected networks, systems, services, or equipment.

- E. **Illegal or Unauthorized Access to Other Computers or Networks.** Accessing illegally or without authorization computers, accounts, or networks belonging to another person; attempting to penetrate security measures of another person's system (often known as "hacking"), including any activity that might be used as a precursor to an attempted system penetration (e.g. port scan, stealth scan, or other information gathering activity); or attempting to intercept, redirect, or otherwise interfere with communications intended for others.
- F. **Intellectual Property.** Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, patents, service marks, and trade secrets. Software piracy is an example of such infringement. We are required by law to remove or block access to content upon receipt of a proper notice of copyright infringement. We may terminate the privileges of customers who commit repeat violations of copyright laws.
- G. **Privacy and Other Personal Rights.** Engaging in activity that violates privacy, publicity, or other personal rights of others.
- H. **Obscene Speech or Materials.** Using our networks to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. We are required by law to notify law enforcement agencies when we become aware of the presence of child pornography on or being transmitted through our networks.
- I. **Defamatory or Abusive Language and Harassment.** Using our networks as a means to transmit or post defamatory, abusive, or threatening language, or to harass others, whether through language, frequency or size of messages.
- J. **USENET Postings.** Posting to a USENET group material that is not in compliance with that group's charter and other policies, including cross-posting to unrelated news groups and posting of commercial messages (unless specifically invited by charter). Inappropriate postings also include those which have the effect of disrupting newsgroups with materials, postings, or activities that are (as determined by us in our sole discretion) frivolous, unlawful, obscene, threatening, abusive, libelous, hateful, excessive, or repetitious, unless such materials or activities are expressly allowed or encouraged under the newsgroup's name, FAQ, or charter.
- K. **Export Control.** Unlawfully exporting encryption software to points outside the United States or otherwise violating export control laws or regulations.
- L. **Other Illegal Activities.** Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available Ponzi schemes, pyramid schemes, illegal gambling sites or services, fraudulently charging credit cards, and pirating software.
- M. **Other Activities.** Engaging in activities, whether lawful or unlawful, that we reasonably determine to be harmful to our customers and their users, or to our operations, reputation, goodwill, or customer relations.
- N. **Facilitating a Violation of this Policy.** Advertising, transmitting, or otherwise making available any software, program, product, or service that has the effect of violating or facilitating the violation of this Policy. Failure to cooperate effectively in preventing a violation of this Policy by one of your users is itself a violation of this Policy.

- 4. NETWORK MANAGEMENT.** To preserve the integrity of our network, we implement reasonable network management practices to ensure that customers can effectively use the Internet. Activities that disrupt the use or interfere with the ability of others to effectively use the DQE network, system, service, or equipment by programs, scripts or commands including, but not limited to, Denial of Service Attacks (DDoS), SYN Floods, or similar activities shall be considered a violation of this Policy.

You acknowledge that should you become the target of a DDoS or similar attack, DQE Communications (“DQE”) reserves the right to block access to the IP address(es) being attacked until DQE can determine that the attack has ceased and is not likely to imminently return once service is restored. Should your server become the target of persistent, repeated attacks that require the intervention of a network administrator or attacks of sufficient scope to impact network performance and availability, DQE may choose to suspend or terminate services to maintain the quality of service for other customers on our network.

- 5. CONSEQUENCES FOR VIOLATION OF THIS POLICY.** You are responsible for avoiding violations of this Policy, whether or not the violation is generated by you or a third party. We will not, as an ordinary practice, monitor the communications of our customers and their users to ensure that they comply with this Policy or applicable law. When we become aware of a violation of this Policy, however, we may take any action reasonably intended to stop the violation. Such actions may include, but are not limited to, removing information, shutting down a Website, implementing screening software designed to block offending transmissions, denying access to the Internet, and suspending or terminating our services. We may refuse to accept postings from newsgroups where we have knowledge that the content of the newsgroup postings is in violation of this Policy. We may take such actions against you, even though a violation may be generated by a third party rather than by you and even though the action may affect your other users. We may also take such actions directly against your user which is generating the violation, but we have no obligation to do so. We may require you to install and use any appropriate devices to prevent violations of this Policy, including devices designed to filter or terminate access to the services provided by us.

We may report any activity that we suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Our reporting may include disclosing appropriate customer information. We also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of this Policy.

- 6. COOPERATION.** We anticipate working closely and cooperatively with you to resolve violations of this Policy in most cases, as quickly as possible and with a minimum of disruption to operations and services. If you become aware of any violation of this Policy by any person, including your users, please notify us. We, in turn, will notify you in most cases of complaints received by us regarding incidents of alleged violation of this Policy by you or your users. (In cases where they viability of our networks is threatened or which involve spamming, mail relaying, alteration of your source IP address information, denial of service attacks, illegal activities, harassment or copyright infringement, we reserve the right to suspend your service or your user’s access to the service without notification”) You should promptly investigate all such complaints and take all necessary actions to remedy and actual violation of this Policy. We may identify with the necessary information to contact you directly to resolve the complaint. You should identify a representative for the purposes of receiving such communications.

7. ACCOUNT USAGE AND PRIVACY

- A. **Your Receipt of Information.** We cannot monitor, verify, warrant, or vouch for the accuracy and quality of the information that you or your users may acquire: For this reason, you and they must exercise your best judgment in relying on information obtained from the Internet, and should also be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because we cannot monitor or censor the Internet, and will not attempt to do so, we cannot accept any responsibility for injury to you or your users that results from inaccurate, unsuitable, offensive, or illegal Internet communications.
- B. **Your Dissemination of Information.** We do not review, edit, censor, or take responsibility for any information that you or your users may create: When you or your users send information using our services, you have the same liability as do other authors for copyright infringement, defamation, and other harmful speech.
- C. **Privacy of Communications.** We are concerned about the privacy of on-line communications and Websites: In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, we urge you to assume that all your on-line communications are insecure. We cannot assume any responsibility for the security of information transmitted over our facilities. We will not intentionally monitor private electronic mail messages sent or received by you or your users unless required to do so by law, governmental authority, or when public safety is at stake. We may, however, monitor our services electronically to determine that our facilities are operating satisfactorily.
- D. **Compliance with Government Authorities.** We may disclose information, including but not limited to, information concerning a subscriber, a transmission made using our network, or a Website, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. We assume no obligation to notify you or your users that your information has been provided, and in some cases we may be prohibited by law from giving such notice. We may disclose subscriber information or information transmitted over our networks where necessary to protect us and others from harm, or where such disclosure is necessary to the proper operation of our networks, services and systems.