

# DQE COMMUNICATIONS LLC

## STANDARD TERMS AND CONDITIONS

GENERAL TERMS & CONDITIONS.....	2
INTERNET.....	12
DEDICATED INTERNET .....	15
METRO ETHERNET.....	21
WAVELENGTH.....	27
DARK FIBER .....	32
VOICE SERVICE .....	35
MANAGED WI-FI .....	39
DDOS MITIGATION .....	40
DQE EQUIPMENT.....	44
WIRELESS ACCESS .....	46
COLOCATION.....	50
ACCEPTABLE USE AND PRIVACY POLICY.....	53
CUSTOMER BINDING ARBITRATION.....	57

## 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.
- D. Authorized Representative.** Customer shall designate one or more authorized representatives to act on its behalf with respect to the matters described in this Agreement. Any communication made by such authorized representative to DQE shall be deemed the binding communication of Customer to DQE. Customer represents and warrants that the person executing any Customer Service Order on behalf of customer is a duly authorized representative of Customer with full binding authority to execute the Service Order.

### 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. Termination by DQE.** In addition to termination for cause, DQE may: (i) suspend or terminate any Service that has apparently been abandoned by Customer, if no response from Customer is received within 60 days following notice by DQE; and (ii) terminate any Service Order for convenience upon at least 60 days prior written notice to Customer in the event that DQE determines in its sole discretion not to continue providing the applicable Service to Customer. .
- 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. 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.**

- i. Connection to Network.** 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 warrants that it owns the Customer Equipment, or has sufficient access and control rights to provide DQE necessary access to the Customer Equipment in delivery of the Services. Customer is responsible for procurement, access control, security and maintenance of all Customer Equipment. All Customer Equipment must be technically compatible with the applicable Service and DQE's network. DQE shall have no obligation to test, install, maintain or repair any non-DQE Facilities, including any Customer Equipment. DQE reserves the right to disallow the use of Customer Equipment that in our sole discretion is not compatible with our network or is altered or tampered in any way. 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. In the event DQE provides any type of service or assistance related to the Customer Equipment, it shall not be liable for any damages.
- ii. Security.** Customer acknowledges that Customer Equipment poses a security risk to DQE's network and equipment, and Customer agrees it shall implement reasonable security measures and procedures with respect to Customer Equipment, including but not limited to maintaining physical security, password protection, and authentication for access to Customer Equipment. Customer is solely responsible for any security devices Customer chooses to connect or install on Customer Equipment. Customer shall be liable to Company for all damages, costs, and fees resulting from any unauthorized use, sharing, access, eavesdropping or any associated risks of unauthorized use of Customer Equipment, including the value of any Services obtained in violation of this Agreement.
- iii. Harmful Interference.** Should any Customer Equipment or other equipment operated at Customer's Premises cause any harmful electrical field, radio frequency or intermodulation interference to DQE's Network or equipment (collectively, "Harmful Interference"), Customer shall be responsible for resolving the Harmful Interference at its effort and expense, and DQE shall not be responsible for any degradation of Services caused by the Harmful Interference.

- 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 and 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. 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.

DQE DOES NOT WARRANT THAT CUSTOMER EQUIPMENT WILL ENABLE CUSTOMER TO SUCCESSFULLY INSTALL, ACCESS, OPERATE, OR USE THE SERVICES. CUSTOMER ACKNOWLEDGES THAT ANY SUCH INSTALLATION, ACCESS, OPERATION, OR USE COULD CAUSE DAMAGE TO CUSTOMER EQUIPMENT. COMPANY SHALL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY SUCH FAILURE OR DAMAGE, INCLUDING LACK OF 911/E911 OR DIALING ASSOCIATED WITH A SECURITY SYSTEM.

#### **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.**

- A. Informal Dispute Resolution.** Any disagreement or dispute between the Parties, as defined below ("Dispute") 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.
- B. Arbitration.** Should the executive officers be unable to promptly resolve a dispute, either Party may commence Binding Arbitration in accordance with the Binding Customer Arbitration schedule in this Agreement. .
- C. Definition.** For this purposes of this Agreement, "Dispute" means any dispute, claim or controversy – of any kind or nature, between Customer and DQE that arises from or in relation with the Services or the Agreement, be it based on a contract, statute, regulation, ordinance, and damages (including but not limited to fraud, false representation, fraudulent induction, negligence or any other intentional damage) or any other legal theory or in equity, including the validity, applicability or range of this Agreement and that of the class action waiver. "Dispute" also includes claims and/or disputes by or against a third party related to a provision or presentation of any product, service or benefit related to the Services (including, but not limited to, third parties that use or access the Service, debt collectors and all of their agents, employees, directors and representatives) if and only if, the third party denominates itself as a co-party with you or us (or a claim with or against you or us), in relation to a claim from you or us against the others. As used in this Arbitration Procedure, the terms "you" and "us" include also any parent corporation, or all or most of its subsidiaries, affiliates, license holders, predecessors, successors, assignees, account buyers, all agents, employees, directors and representatives of any of the aforementioned and any third party that uses or gives any product, service or benefit. The term "Dispute" or "Claim" will have the broadest meaning possible that is feasible.

## **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.** These terms and conditions, together with 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 (iv) 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. Modifications.** DQE may modify this Agreement, at any time and without prior notice, except where otherwise provided by law. By continuing to use our Services, you accept and agree to be legally bound by this Agreement, including any modification thereof. If you do not agree to be legally bound by these terms and conditions, or to any modification, you should immediately stop use of the Services and notify us to terminate the Services, subject to any applicable termination fees and other terms and conditions of the Agreement. The updated version of this Agreement, [www.dqecom.com](http://www.dqecom.com).
- C. 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.

- D. 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. You acknowledge that use of the Internet Service does not give you any ownership or other rights in any IP addresses provided to you.
  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. **RISKS OF INTERNET ACCESS.** Use of DQE's Internet Service presents certain risks for which the DQE cannot be responsible, including without limitation:
- A. **Computer File Backup.** You understand and accept the risks if you decide not to back up files. Neither DQE nor its service providers shall have any liability whatsoever for any damage to or loss of any software, files, or data.
  - B. **Viruses.** Websites visited or data received through the Service may contain viruses. It is your sole responsibility to take appropriate precautions to protect against damage to or destruction of hardware, software, files and data. DQE may, but is not obligated to, run third party virus check software on your computer prior to installing software related to the Service. DQE does not represent or warrant that doing so will detect or correct any or all viruses. DQE may, but is not required to, suspend or terminate availability of the Service if a virus is found to be present on any user's system or in any communications sent or received through the Service.
  - C. **Unauthorized Access to Your Computer and Files.** Inherent in Internet access is the risk that unauthorized persons will use your Service or gain access to your computer and to the software, files, personal information and other data stored or transmitted by you, install a "bot" on or otherwise "hijack" your computer or harm or misappropriate your computer, systems and files in some other way. Usage of the Service is at your sole risk, and you are responsible for the security of your computer, equipment, information and data traffic. DQE shall have no liability whatsoever if third parties intercept data transmissions by or to you or otherwise gain access to or misuse your computer, other equipment, files or account.
  - D. **Eavesdropping and Customer Equipment Security.** The public Internet is used by numerous persons or entities including, without limitation, other subscribers to our Internet Service. As is the case with all shared networks like the public Internet, there is a risk that you could be subject to "eavesdropping." This means that other persons or entities may be able to access and/or monitor your use of the Services. If you post, store, transmit, or disseminate any sensitive or confidential information, you do so at your sole risk. You acknowledge that when using the Services there are certain applications and techniques that may be used by other persons or entities to gain access to Customer's Equipment. You are solely responsible for the security of the Customer Equipment or any other equipment you choose to use in connection with the Services, including without limitation any data stored on such equipment. NEITHER DQE NOR ITS AFFILIATES OR AGENTS SHALL HAVE ANY LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS ARISING OUT OF OR OTHERWISE RELATING TO SUCH ACTIONS BY YOU OR OTHERS, THE USE OF SUCH APPLICATIONS BY YOU, OR THE ACCESS BY OTHERS TO THE CUSTOMER EQUIPMENT OR OTHER EQUIPMENT OF YOURS. Questions or complaints regarding content or material should be addressed to the content or material provider. You acknowledge that software programs are commercially available that claim to be capable of encryption or anonymization. We make no representation or warrant regarding the effectiveness of these programs.
  - E. **Exposure to Inappropriate Content.** There may be content available through the Internet which is illegal, violates third party property or other rights or is offensive. DQE is not responsible for the content contained on the Internet or otherwise available through the Service. DQE shall not be liable for any claims, losses, actions, damages, suits or proceedings arising out of, or otherwise relating to, such content.

## **6. 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. DQE reserves the right to take actions to protect the security and integrity of the DQE Network that are consistent with applicable law. These actions may affect your Service, your computer, software, files, personal information and other data stored or transmitted by you.
- 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. **This Dedicated Internet Service Schedule incorporates by reference the terms and conditions of the Internet Service Schedule.** 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. You acknowledge that use of the Internet Service does not give you any ownership or other rights in any IP addresses provided to you.

- 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.

<b>DQE Availability SLA Credit Formula</b>	
<b>Cumulative Unavailability (hrs:mins:secs)</b>	<b>SLA Credit</b>
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](http://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 95<sup>th</sup> Percentile Calculation is used to determine if the Customer utilized the burstable bandwidth in a manner that results in additional charges. The resulting 95<sup>th</sup> Percentile Calculation is compared to the Subscribed service level. The amount of which the 95<sup>th</sup> 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](http://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 95<sup>th</sup> Percentile Calculation is used to determine if the Customer utilized the burstable bandwidth in a manner that results in additional charges. The resulting 95<sup>th</sup> Percentile Calculation is compared to the Subscribed service level. The amount of which the 95<sup>th</sup> 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<sub>sp</sub>** = 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).

## VOICE SERVICE

### **IF YOU ARE A CUSTOMER WITH AN EMERGENCY, DO NOT CALL DQE – CALL 911 IMMEDIATELY.**

- 1. SERVICE DESCRIPTION.** DQE Voice over Internet Protocol calling service (Voice Service”) is a voice telephony service using a combination of DQE and third-party network facilities. Voice Services includes the ability to make voice telephone calls using Customer Equipment, as well as ancillary services including but not limited to voice mail, conference calling, video calling, caller ID and messaging services as might be included in the applicable Customer Service Order. Voice Services must be purchased and bundled with DQE Internet Service or Dedicated Internet Service.
- 2. USAGE BILLING**
  - A. Per-Call and Measured-Call Charges.** Calling plans billed on a flat monthly fee basis may not include certain call types. These call types will instead be charged on a per-call (e.g., operator services) or a measured basis (e.g., international calls). For billing purposes, a measured call begins when the carrier of the receiving party returns signaling to our network that the call has been answered and it ends when one of the parties disconnects the call. Measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. If the computed charge for a measured call includes a fraction of a cent, the fraction is rounded up to the nearest whole cent. Please contact us for information on per-call charges. If you believe the Service is being used for fraudulent purposes, contrary to the law, in violation of this Agreement, or for any other reason consistent with the terms of the law or this Agreement you may ask the Company to block all toll (long-distance) calls from the network. In the event of fraudulent or other unauthorized use of the Services from the Service Location, you remain responsible for all charges incurred prior to the time you ask the Company to block toll calls.
  - B. Third-Party Charges.** Voice Services may allow you to access information and other service providers (e.g., services accessible through 800, 888, 877 and 900 numbers), and other third-party providers. You acknowledge that you may incur charges with such providers that are separate and apart from the amounts charged by us. You agree that all charges payable to third parties, including all applicable taxes, are your sole responsibility. Notwithstanding anything to the contrary in the Agreement, some providers (e.g., those involved in calls to foreign countries) charge for a completed call when the called party’s line rings or after a certain number of rings. If such a provider charges Company, as if such a call were answered by the called party, Company will charge Customer for a completed call.
- 3. LIMITATIONS OF 911/E911 DIALING.** DQE’s Voice Service includes 911/Enhanced 911 functions (“911/E911”) that may differ from 911/E911 functions furnished by traditional telephone service providers. As such, the 911/E911 Services may have certain limitations. **CAREFULLY READ THE INFORMATION BELOW. YOU ACKNOWLEDGE AND ACCEPT ANY LIMITATIONS ON 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY HAVE OCCASION TO PLACE CALLS OVER THE SERVICES.** If you have any questions about 911/E911, contact your DQE account representative.

**A. Correct Address.** In order for your 911/E911 calls to be properly directed to emergency services, we must have the correct address for the Service Location. If you move the Voice Service to a different Premise without our approval, 911/E911 calls may be directed to the wrong emergency authority, may transmit the wrong address and/or the Voice Service (including 911/E911) may fail altogether. Therefore, you must contact customer service at [customercare@dqe.com](mailto:customercare@dqe.com) before you move the Voice Service to a new address. All changes in service address require our prior approval. Customer must in the initial or a subsequent Service Order request the assignment of Emergency Location Information numbers and provide location information within a multitenant environment for each number exactly as it should appear to the 911 call taker. Customer is solely responsible for programming its telephone system to map each location to one of these numbers, and for updating the system as necessary to reflect moves or additions of stations within the Service Location. Customer acknowledges and understands that it, and not the Company, bears sole responsibility to ensure that it identifies and complies with any laws requiring the provision of specific location information, and any failure to do so is a breach of the Agreement. YOU UNDERSTAND AND ACKNOWLEDGE THAT DQE WILL NEED SEVERAL BUSINESS DAYS TO UPDATE YOUR SERVICE ADDRESS IN THE E911 SYSTEM SO THAT YOUR 911/E911 CALLS CAN BE PROPERLY DIRECTED.

**B. Service Interruptions.** Access to 911/E911 requires that your Voice Service is active and that you have electrical power connected to your MTA (multimedia terminal adapter). YOU UNDERSTAND AND ACKNOWLEDGE THAT YOU MAY LOSE ACCESS TO AND USE OF VOICE SERVICE, INCLUDING 911/E911, UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO THE FOLLOWING: (i) IF OUR NETWORK OR FACILITIES ARE NOT OPERATING; (ii) IF ELECTRICAL POWER TO THE MODEM IS INTERRUPTED AND THE MODEM DOES NOT HAVE A BATTERY BACKUP; (iii) IF THE ELECTRICAL POWER TO THE MODEM IS INTERRUPTED AND ANY BATTERY BACKUP IS EXHAUSTED OR FAILS; or (IV) YOUR SERVICE HAS BEEN SUSPENDED OR IS NOT PROPERLY FUNCTIONING. You also understand and acknowledge that battery backup may provide power for only a limited time, that the performance of the battery backup is not guaranteed, and that if the battery is exhausted, the Voice Service will not function until normal power is restored. You understand and acknowledge that your MTA may not have battery backup or another power source of its own. Furthermore, calls, including calls to 911/E911, may not be completed if there is a problem with network facilities, including network congestion, network or network equipment failure, or another technical problem.

**C. Suspension and Termination by DQE:** You understand and acknowledge that all Voice Service, including 911/E911, as well as all online features of Voice Service, where we make these features available, will be disabled if your account is suspended or terminated.

**4. LIMITATION ON LIABILITY AND INDEMNIFICATION.** YOU ACKNOWLEDGE AND AGREE THAT COMPANY AND ITS SERVICE PROVIDERS WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY AND ITS SERVICE PROVIDERS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, YOU OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE

SERVICES, INCLUDING THOSE RELATED TO 911/E911 SERVICES PROVIDED TO YOU IN CONNECTION WITH THE SERVICES.

**5. ACCEPTABLE USE AND ADDITIONAL USE RESTRICTIONS.** Except as otherwise provided in the General Terms and Conditions, Voice Service may only be used at Service Location(s) where such service is installed by DQE. Customer understands and acknowledges that if Customer attempts to install or use the DQE Equipment or Voice Service at another location, Voice Service, including but not limited to 911/E911, may fail to function or may function improperly. It will be considered a material violation of the Agreement if Customer moves Voice Service to another location without first notifying DQE. Customer expressly agrees not to use Voice Service for auto-dialing, continuous or extensive call forwarding, telemarketing (including without limitation charitable or political solicitations or polling), fax or voicemail broadcasting or blasting, or for any other use that results in excessive usage inconsistent with standard commercial calling patterns. If DQE determines, in its sole discretion, that Customer's use of Voice Service is excessive, or otherwise in violation of this Agreement, DQE reserves the right, among other things, to (i) immediately and without notice to terminate or modify the Services and (ii) to assess additional charges for each month in which excessive usage occurred. Further, we may suspend the account or accounts involved and/or block long distance calling that potentially violates this Agreement. You expressly authorize and consent to the DQE and its supplier's cooperation with (i) law enforcement authorities in the investigation of suspected legal violations, and (ii) other network or service suppliers in order to enforce this Agreement. Upon termination of your Service account, the DQE is authorized to delete any voice mail associated with your account (and any secondary accounts). The failure of the DQE or its suppliers to enforce this Agreement, for whatever reason, shall not be construed as a waiver of any right to do so at any time. You agree that if any portion of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.

**6. EQUIPMENT.**

**A. Customer Equipment:** To use the Voice Services on a dedicated telephone, you will need to provide the phone handset and an MTA (multimedia terminal adapter) certified by us as compatible with the Voice Services as part of the Customer Equipment. For soft-phone services, you must provide the access device (computer, tablet, or wireless handset) as part of the Customer Equipment.

**B. Incompatible Equipment and Services:** You acknowledge and understand that the Voice Services may not support or be compatible with:

- Certain non-voice communications equipment, including but not limited to alarm or security systems that make automatic phone calls; medical monitoring devices; certain fax machines; electronic monitoring bracelets; and certain "dial-up" modems;
- Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as answering machines and traditional Caller ID units;
- Dial around (10-10) calling; 976, 900, 700, or 500 number calling; (v) 211, 311, 511, or 811 calling; and
- Other call types not expressly set forth in our product literature (e.g., shore-to-ship calling and outbound satellite calling).

BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST DQE AND ITS SERVICE PROVIDERS, FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN DQE EQUIPMENT OR THE SERVICES AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY SHALL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH THE AGREEMENT, SUBJECT TO ANY EARLY TERMINATION FEES.

7. **CALL TRACE SERVICES.** DQE will provide Call Trace Service (“Call Trace”) upon request from law enforcement agencies. . The information obtained from the Call Trace will be available only to law enforcement officials with either a valid subpoena or another valid legal authorization in compliance with the Communications Assistance to Law Enforcement Act (CALEA).
8. **YOU ASSUME THE RISK OF HIGH-RISK ACTIVITIES.** The Voice Services are not represented as fail-safe. They are not designed for use in situations where error-free or uninterrupted service is essential. You expressly assume the risk of any damages from high-risk activities involving vital communications in which an error or interruption in the Services could lead to material injury to business, persons, property, or the environment.
9. **TRANSFER OF YOUR PHONE NUMBER (“NUMBER PORTABILITY”).**
  - A. **Switching to DQE from another provider.** If you are switching to our Services from another service provider, you will cooperate fully with the DQE and provide promptly all information, including the pin number and a letter of authorization or other documentation, as requested by DQE in connection with the processing of your order for Service. You authorize DQE to notify your current telephone service provider of your decision to switch your local toll and long distance services to the Service, and you represent you are authorized to take such actions. In addition to the conditions set forth above, the additional limitations may apply: you may transfer your existing phone number (if any) to our Services, provided that (i) you request the phone number transfer when you place your order for our Services, authorizing DQE to request on your behalf the transfer of your existing phone number and after the installation service visit; (ii) your current service provider releases your existing phone number, at our request, without delay or charge; (iii) transfer of your existing phone number to our Services would not, in our view, violate applicable law or our processes and procedures; (iv) you acknowledge and agree that if your MTA is set up before the date that the number transfer becomes effective (“Port Effective Date”), you may only be able to make limited outgoing calls over the phone that you have connected to the MTA. In that event, you should keep another phone connected to an existing phone extension at your Service Location to receive incoming calls until the Port Effective Date, after which you will be able both to make and to receive calls using our Services; and (v) you acknowledge and agree that to avoid an interruption in your phone service, it is extremely important that you have the MTA installed on or before the Port Effective Date. Your existing phone service for the number you are transferring will be disconnected on the Port Effective Date; if your MTA is not yet activated, you will not have access to our Services. Therefore, you will not have service for that phone number.
  - B. **Switching from DQE to another provider.** To transfer your phone number from DQE to another service provider, you must place the transfer order through your new service provider and then terminate the Service with DQE, subject to any early termination fee. Requesting a service from another provider and the transfer or portability of your number with DQE, does not automatically cancel your Agreement with DQE.

## MANAGED Wi-Fi

- 10. 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.
- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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 an 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. **Provider** – DQE’s third-party provider responsible for providing wireless network connectivity and services to support Wireless Access Service. **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 Wireless Equipment to Customer upon availability. Customer shall return the non-working Wireless 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 shall be a default pursuant to the terms of the Agreement. If Wireless Equipment cannot be recovered by DQE, or is damaged beyond the ordinary wear and tear, then Customer will be liable to DQE for either the replacement value of the Wireless Equipment or the cost for repair, at DQE's discretion and determination. 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.

- A. 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.
- B. Authorizations.** In the course of providing Service to Customer, DQE may require Customer account information from third party vendors (including Provider) 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.
- C. Regulatory.** Customer expressly understands and agrees that the liability and obligations of DQE to Customer under this Agreement for Services may be strictly controlled and limited by Provider's tariff, if any, and the laws, rules and regulations of the Federal Communications Commission and other United States or foreign governmental authorities which from time to time have jurisdiction. Subject to FCC Number portability rules, Customer has no property or other rights in any telephone number assigned to the Service and Customer accepts and agrees that DQE may change telephone numbers associated with the Service at any time.

## **2. 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 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, Provider, their respective 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. Provider shall have no liability to Customer for failure of the Wireless Equipment.

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 Liability.** Customer shall indemnify, defend and hold DQE, Provider and the officers, employees and agents of each of them harmless from and against all claims, causes of action, losses, expenses, liability or damages (including reasonable attorneys' fees and costs), and including without limitation for any personal injury or death, arising in any way directly or indirectly in connection with the provision or use of the Service. This provision shall survive the termination of this Agreement. Customer waives any and all claims against Provider, including any roaming carrier used by Provider, for suspension or termination of Service due to a bona fide dispute between DQE and Provider.
- C. Limitation of Damages.** Customer has no contractual relationship with Provider and Customer is not a third-party beneficiary of any agreement between DQE and Provider. Customer understands and agrees that Provider shall have no legal, equitable or other liability of any kind to Customer. Regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, Customer's exclusive remedy and the total liability of DQE, Provider or their respective agents and contractors arising in any way in connection with this Agreement, for any cause whatsoever, including but not limited to any failure or disruption of Service, shall be limited to payment by DQE of damages in an amount equal to the amount charged to Customer for the Service provided under this Agreement. In no event shall DQE or Provider be liable for any cost, delay, failure or disruption of the Service, lost profits, or incidental, special, punitive or consequential damages.
- D. Limitation of Wireless Service.** Customer acknowledges that the Service may be temporarily refused, interrupted, curtailed or limited because of atmospheric, terrain, or other natural or artificial conditions and may be temporarily interrupted or curtailed due to usage concentrations, modifications, upgrades, relocation and repairs of the wireless network. Customer agrees that DQE and Provider shall not be responsible for such interruptions of the Service or the inability to use the Service. Customer understands that DQE and Provider cannot guarantee the security of wireless transmissions and will not be liable for any lack of security relating to the use of the Service.
- E. Provider Service.** The quality, service, and terms of service are subject to DQE's agreements with Provider. DQE may change 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

- 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.

## **PRIVACY**

1. **CUSTOMER INFORMATION AND PRIVACY.** This Privacy Policy governs how DQE collects, protects and disseminates information that you create using the Services, or that DQE creates relating to our use of Services and your account.
2. **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.
3. **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.
4. **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.
5. **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.

## CUSTOMER BINDING ARBITRATION

**PLEASE READ THIS SECTION CAREFULLY. IT REQUIRES RESOLUTION OF DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.**

- 1. DESCRIPTION OF ARBITRATION.** In the event of a Dispute with DQE that cannot be resolved through informal means, you or the Company may elect to arbitrate that Dispute in accordance with the terms of this “Arbitration Procedure” rather than litigate the Dispute in court. Arbitration means that you will have a fair hearing before a neutral arbitrator instead of a court before a judge or jury. Proceedings in arbitration may also result in limited discovery. An arbitration award is subject to limited review by a court.
- 2. AGREEMENT.** This Arbitration Procedure establishes the conditions and the procedures related to a resolution through arbitration of any claim and/or dispute, as defined below that can arise between you and DQE. This means that if either party chooses arbitration, neither you nor we have the right to litigate and/or present legal action in first instance before any court. As part of the requirements established here, your capacity to participate in a class action is limited. By agreeing to this Arbitration Procedure, you may be waiving constitutional or statutory rights.
- 3. RIGHT TO OPT-OUT.** YOU MAY OPT OUT OF THIS ARBITRATION PROVISION (EXCEPT FOR THE SUB-SECTION TITLED CLASS ACTION WAIVER AND OTHER RESTRICTIONS) BY NOTIFYING DQE OF YOUR INTENT WITHIN THIRTY (30) DAYS OF THE DATE YOU FIRST RECEIVE THIS AGREEMENT. YOU MAY OPT OUT THROUGH EITHER OF THE FOLLOWING OPTIONS (PLEASE INCLUDE YOUR NAME, ADDRESS, ACCOUNT NUMBER AND THE E-MAIL ADDRESS YOU USED TO REGISTER FOR YOUR DQE ACCOUNT): (1) SENDING A LETTER STATING YOUR INTENT TO REJECT THIS DISPUTE RESOLUTION PROVISION TO DQE AT DQE COMMUNICATIONS, LEGAL DEPARTMENT, 45 SOUTH 23RD STREET PITTSBURGH, PA 15203; OR (2) SENDING AN E-MAIL WITH YOUR INTENT TO REJECT THIS DISPUTE RESOLUTION PROVISION TO **CUSTOMERCARE@DQE.COM**. OPTING OUT WILL NOT AFFECT ANY OF THE OTHER TERMS OF THIS AGREEMENT WITH DQE AND YOU MAY REMAIN A DQE CUSTOMER. IF YOU HAVE PREVIOUSLY OPTED OUT OF THIS ARBITRATION PROVISION, YOU WILL NOT BE REQUIRED TO DO SO AGAIN.
- 4. CLASS ACTION WAIVER AND OTHER RESTRICTIONS.** The parties to any arbitration must be individually named. There shall be no right or authority for any claims to be arbitrated or litigated on a class action or consolidated or a purported representative capacity. The arbiter will only have the authority to resolve Disputes between you and DQE.
- 5. APPLICABLE LAW.** This Arbitration Procedure will be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16, as may be amended (“FAA”), and the corresponding and applicable regulation. This Arbitration Procedure will survive the cancelation of the Contract. The FAA and not state arbitration laws will govern arbitration procedures for all Disputes. The arbitration proceeding shall be governed by the AAA’s Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes that are in effect when the arbitration is initiated (collectively, “AAA Rules”). The AAA’s rules are available on its website at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.

However, applicable federal law or Commonwealth of Pennsylvania law will provide the substantive law governing any Dispute. Any Commonwealth of Pennsylvania arbitration law will not be applicable under this Arbitration clause. If there is a conflict between this Arbitration Procedure and AAA Rules, the rules included in this Agreement will apply. If there is a conflict between this Arbitration Procedure and other terms in the Contract, this Arbitration Procedure will apply.

6. **INITIATION.** If you or DQE choose to resolve your Dispute through arbitration, the party that initiates the arbitration will choose the following arbitration organization, which will apply the appropriate customer claim rules to arbitrate the Dispute:

**American Arbitration Association (“AAA”)**  
**335 Madison Ave., Floor 10**  
**New York, NY 10017-**  
**(800)778-7879**  
**[www.adr.org](http://www.adr.org)**

7. **ARBITRATION PROCEDURE.** A single arbiter will resolve the Dispute. The arbiter will honor the privilege claims acknowledged by applicable law and will take reasonable steps to protect the customer’s account information and other proprietary or confidential information, including on the party’s request the use of protective orders to prohibit disclosure outside arbitration. The arbiter will make the award in writing but will not be required to provide a statement of the reasons unless you or DQE request one, in which case the arbiter will provide a brief statement of the reasons for his award. If the arbiter makes an adjudication of over \$5,000.00, any of the parties can appeal the decision before a panel of three arbiters run by the AAA. The three members of this panel will be chosen according AAA Rules. The party that wishes to appeal the first arbiter’s decision will have thirty (30) days from the date of entry of the final award to file a written notice of appeal. The AAA will then notify the other party that the initial adjudication has been appealed. The three-arbiter panel will issue its decision within a period of one-hundred and twenty (120) days from the appeal notification date. The three-arbiter panel’s decision will be final and binding, except for any appeal rights that exist under the FAA.
8. **ARBITRATION RESTRICTIONS.** ALL DISPUTES COVERED BY THIS ARBITRATION PROCEDURE MUST BE FILED AND SUBMITTED TO ARBITRATION NO LATER THAN ONE (1) YEAR AFTER THE AGGRIEVED PARTY BECAME AWARE OR SHOULD HAVE BECOME AWARE OF THE ACT OR OMISSION GIVING RISE TO THE DISPUTE. THE FAILURE TO SUBMIT A DISPUTE TO ARBITRATION WITHIN ONE (1) YEAR IS AN ABSOLUTE IMPEDIMENT TO THE INSTITUTION OF ARBITRATION OR ANY OTHER LEGAL PROCEEDING IN ANY FORUM BASED ON THAT DISPUTE. Under this section, a Dispute is deemed to have been submitted to arbitration on the date a formal written arbitration demand is presented at the FAA, and with a copy of the submitted demand to the Company pursuant to the Notice provisions of this Agreement contained in Section 19 of this Agreement.
9. **ARBITRATION LOCATION, FEE PAYMENT AND CHARGES.** The arbitration will take place in Pittsburgh, Pennsylvania. Upon receipt of your written arbitration request, DQE will pay the filing fee for the arbitration, and the arbiters’ costs and expenses. You will be responsible for any additional costs you may incur for the arbitration, including but not limited to attorney or expert fees. If one of the parties chooses to appeal the decision to a three-arbiter panel, the winning party in the appeal will have the right to recover all attorney fees and costs that were incurred in that appeal.

**10. SEVERABILITY.** If any clause in this Arbitration Procedure is found to be illegal or unenforceable, that clause will be severed from this Arbitration Procedure, and the rest of this will be given full force and effect. If the class action waiver clause is found to be illegal or unenforceable, this entire Arbitration Procedure will not be enforceable and the Dispute will be decided by a court. In the case that this entire Arbitration Procedure is found to be illegal or unenforceable, for any reason, or if a claim is brought in a Dispute that is found to be excluded from this Arbitration Procedure, YOU AND DQE AGREE TO THE MAXIMUM EXTENT PERMITTED BY LAW, TO WAIVE THE RIGHT TO A JURY TRIAL AND CLASS ACTIONS.

**11. EXCLUSIONS FOR SMALL CLAIMS AND OTHER CLAIMS.** You and Company agree that any claim filed by you or by Company that is not aggregated with the claim of any other subscriber, and whose amount in controversy is properly within the jurisdiction of a court which is limited to adjudicating small claims, will not be subject to arbitration. Claims where the amount in dispute is valued at less than the cost of AAA fees, disputes about company's intellectual property, and claims related to theft of their service will not be subject to arbitration.