General Terms & Conditions

1. **SCOPE.** Unless superseded by a Master Services Agreement, These General Terms and Conditions govern the relationship between DQE Communications LLC ("DQE") and you ("Customer"). All customer service orders ("Customer Service Order") are subject to and incorporate these General Terms and Conditions and may be modified by DQE from time to time, effective upon publication on DQE's website. DQE may provide services through one or more affiliates.

2. **SERVICES.**

   A. **Customer Service Orders.** Customer must execute a separate Customer Service Order detailing the services to be provided by DQE ("Services"), using a template form provided by DQE, as may be modified from time to time. Customer Service Orders shall clearly set forth: (i) term ("Service Order Term"); (ii), service type; (iii) service locations; (iv) all fees to be paid by Customer ("Service Fees"), including the monthly recurring charge ("MRC"), non-recurring charge ("NRC"), and early termination charge; and (v) and any additional specific terms for the Services. All Customer Service Orders shall be subject to availability and acceptance by DQE.

   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. **Use of Services**. Customer shall not sell, resell or sublease the Services in whole or in part. Customer (and others with access through Customer to the Services) shall abide by all laws and by DQE's Acceptable Use Policy which is incorporated herein by reference. Use of Services in violation of the Acceptable Use Policy or applicable laws shall constitute a material default by Customer. Customer shall take reasonable steps to ensure others do not gain unauthorized access to the Service. This Agreement is also subject to DQE's Privacy Policy, which is incorporated herein by reference.

   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.

3. **TERM AND TERMINATION.**

   A. **Customer Service Order Term.** Unless otherwise agreed to by the Parties: (i) the start of the Service Order Term will be the Service Commencement Date (as defined below); (ii) 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; and (iii) 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, the then-applicable Service Fees during the holdover period shall increase

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at DQE's discretion by at least ten percent (10%).

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 DQE, the affected Customer Service Order may be terminated. If all Customer Service Orders are terminated pursuant to this Section, the non-defaulting party may terminate this Agreement. Any potential default not claimed within ninety (90) days of its occurrence shall be deemed waived by Customer.

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 (i.e. Type II services). 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 fifteen (15) days following notice by DQE; and (ii) terminate any Service Order for convenience upon at least 60 days prior written notice to Customer if the provision of Service by DQE becomes uneconomical due circumstances beyond DQE's reasonable control, including increase in government taxes or fees; forced facilities relocation; or material escalation of third-party costs (including Type II costs or real estate fees).

E. Effect of Termination. If DQE terminates this Agreement or any Customer Service Order as a result of any uncured default or Customer abandonment, or if Customer terminates this Agreement or any Customer Service Order at any time following its Effective Date, Customer shall pay any past due balance, plus, (i) all remaining monthly Service Fees due under the remaining term of the applicable Customer Service Order; (ii) any out-of-pocket costs of DQE associated with the initial installation or the termination; and (iii) reimbursement of any third-party fees incurred by DQE as a result of the termination (including Type II costs or real estate fees). Customer Service Orders 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.

4. PAYMENT AND CREDIT.

A. Payment of Service Fees. Customer agrees to pay all Service Fees when due. 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 with at least fifty present (50%) due upon establishment of the FOC Date (as defined below), and the balance included 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 federal or state 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 reviews the documentation and concurs with the exemption. If the tax or governmental authority rules that Customer's exemption is invalid, Customer will reimburse DQE for any Tax, including any penalties and interest, arising from, or in connection with, the invalid claim of exemption.

C. Cost Recovery. DQE may impose and Customer shall pay a cost recovery fee on one or more Services ("Cost Recovery Fee"). The Cost Recovery Fee is intended to recover the direct costs associated with the delivery of the service, including Taxes, fees and regulatory requirements imposed on DQE as a service provider.

D. Relocation and Changes. Any changes to a Customer Service Order, including, without limitation, any changes in the configuration or delivery of service after DQE's acceptance of such Customer Service Order; must be in writing and agreed to by Customer and DQE ("Change Order"). DQE may charge Customer a non-recurring fee for such work to be communicated before Customer's execution of the Change Order ("Change Fee"). Customer-driven changes related to handoff type that require an additional truck roll for DQE will result in a response fee of $250 included within the Change Fee.

E. 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 invoice date. Failure of Customer to notify DQE of a dispute within sixty (60) 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 or Customer, DQE shall provide a detailed explanation for the denial of Customer's claim along with any application calculations.

F. **Review of Customer Credit.** Delivery of the Services is contingent upon DQE's determination, in its sole discretion, that Customer is creditworthy. Upon request, Customer agrees to provide DQE with reasonable information to complete a credit review of Customer. 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.

5. INSTALLATIONS.

A. **DQE Facilities.** DQE may install certain facilities necessary for the provision of Services, including 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 (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, and any violation of this prohibition shall be a material Default by Customer subject to termination of the applicable Customer Service Order at DQE's discretion.

B. **Installation.** DQE shall use commercially reasonable efforts to deliver Services by the agreed-upon Firm Order Commitment date ("FOC Date"). In the event Customer requests expedited service (subject to DQE agreement in its discretion), Customer shall pay an additional fee as well as pay or reimburse DQE for all incremental expenses incurred in its attempt to provide the expedited service (collectively, "Expedited Service Fee")..

C. **Cooperation and Change Orders.** Customer shall reasonably cooperate with DQE to provide timely access to Customer's premises for the design and installation of DQE Facilities. Any material delay or failure in access at a previously scheduled time may result in additional mobilization charges to Customer at a minimum of $250 per occurrence. Any delays caused by failure to obtain adequate and timely access or due to a Change Order shall result in an automatic extension of the FOC Date.

D. **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 the two-day period, if Customer does not provide DQE with written notice that the Services 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, and the foregoing procedure will again apply.

E. **Customer Delay.** In the event that DQE has delivered Services on the FOC Date and Customer is not prepared to accept the Services, DQE may in its discretion grant an extension of up to ten (10) days ("Customer Delay Period") and may impose an additional fee upon Customer in an amount not to exceed one month's MRC plus any direct incremental fees incurred (including Type II costs or real estate fees) under the applicable Customer Service Order. If Customer has not accepted the Services by the end of the Customer Delay Period, then (i) the last day of the Customer Delay Period shall be deemed the Service Commencement Date; and (ii) Customer shall pay all costs incurred by DQE in installation and delivery of the Services, in addition to all other obligations of Customer under this Agreement and the applicable Customer Service Order. Any act, or deliberate failure to act, by Customer to prevent installation or testing without requesting a Customer Delay Period shall also constitute establishment of the Service Commencement Date..

6. EQUIPMENT.

A. **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 Network Interface Devices (NID), routers, Wi-Fi Access Points, telephones 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.

B. **Customer Responsibility.** Customer agrees to the following:

i) 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.

ii) Customer is responsible for providing adequate electrical power for operation of the DQE Equipment. Customer shall not unplug or otherwise intentionally interrupt power to the DQE Equipment.

iii) Customer must report any detected DQE Equipment failure (including due to power loss) as soon as possible and provide any requested information to the DQE NOC and support personnel at 877-263-8638.

iv) Customer shall not access, alter or tamper with the DQE Equipment in any manner which would void applicable manufacturer's warranties.

v) 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.

C. 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:

i) Troubleshooting and remote repair via the DQE NOC; and

ii) 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 representatives.

iii) On-site repair or replacement of DQE Equipment as determined necessary by DQE.

D. 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 WARANT 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.

E. 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.

7. CUSTOMER OBLIGATIONS.

A. 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 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 its sole discretion is not compatible with the 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, plus a service charge of $250. In the event DQE provides any type of service or assistance related to the Customer Equipment, it shall not be liable for any damages.

B. 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 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 DQE 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.

C. 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 ("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.

D. Access and Customer Premises Obligations. For any Customer controlled locations, Customer hereby grants DQE access for installation, repair 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 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. Customer shall be obligated to pay or reimburse DQE for expenses incurred due to failure to obtain access, including the cost associated with any failed service call.

E. Unsafe Conditions. Customer shall make reasonable efforts to assist DQE in ensuring Customer locations are free from unsafe conditions (including 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 at any Customer location that would expose DQE's personnel or contractors to an unreasonable risk to health 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 are 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 can be reasonably addressed by DQE taking necessary safety precautions. At locations where DQE's cost to remove or mitigate unsafe conditions 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.

8. INDEMNIFICATION.

A. Indemnification Obligations. 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 direct or indirect claims of loss, damages, liability, cost and expenses (including reasonable attorney's fees and expenses) ("Claim") 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 Claim arising from: (i) access to Customer facilities by DQE or any agent or contractor; (ii) any unlawful Customer activity; (iii) claims alleging libel, slander, invasion of privacy, violation of intellectual property rights; or (iv) any violation of DQE's Acceptable Use Policy which is incorporated herein by reference, regardless of whether done with intent or knowledge.

B. Notice of Claim. If either Party (the "Indemnified Party") becomes aware of any Claim that may give rise to an indemnification obligation under this Agreement, the Indemnified Party shall promptly notify the other Party (the "Indemnifying Party") in writing. Failure to provide timely notice shall not relieve the Indemnifying Party of its obligations, except to the extent it is prejudiced by such delay.

C. Defense and Settlement. Upon receipt of notice of a Claim, the Indemnifying Party shall have the right to assume and control the defense of such claim, using counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party shall keep the Indemnified Party informed of the status of the proceedings and shall not settle any Claim without the prior written consent of the Indemnified Party, unless such settlement includes a full release of liability for the Indemnified Party and does not impose any obligation or admission of wrongdoing upon the Indemnified Party.

D. Cooperation. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in the defense and resolution of any Claim, including providing necessary documents, information, and assistance as requested. The Indemnifying Party shall reimburse the Indemnified Party for reasonable out-of-pocket expenses incurred in providing such cooperation.

E. Payment of Costs and Damages. If the Indemnifying Party fails to assume the defense of a Claim or does not adequately fulfill its indemnification obligations, the Indemnified Party may assume the defense at the Indemnifying Party's expense. The Indemnifying Party shall indemnify and reimburse the Indemnified Party for all costs, expenses, settlements, judgments, and attorney fees incurred in connection with such Claim.

F. Survival. The Parties' Indemnification obligations shall survive the termination or expiration of this Agreement.

9. 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

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.

10. 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.

11. 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. DQE in its sole discretion may impose higher limits as required by third parties. Customer shall provide a current valid certificate of insurance to DQE upon request.

12. FORCE MAJEURE.

DQE's ability to provide the Services may be impeded by events or actions outside of DQE's reasonable control, including acts of God (including floods, fires, hurricanes or earthquakes), acts of war or terrorism including cyber-terrorism, power outages, internet outages, pandemic or other public emergency, fiber cuts, labor difficulties of DQE or any of its third-party contractors (including 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 Force Majeure. Customer shall not be liable for Service Fees during any Force Majeure period during which DQE is unable to provide Services.

13. DISPUTE RESOLUTION.

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.

A. Informal Dispute Resolution. 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 in the broadest meaning feasible ("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. In the event of a Dispute that cannot be resolved through informal means, DQE may elect to arbitrate that Dispute in accordance with the terms of this section ("Arbitration Procedure") rather than litigate the Dispute in court. Arbitration means that Customer 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. This Arbitration Procedure establishes the conditions and the procedures related to a resolution through arbitration of any Dispute. This means that neither Party will have the right to litigate or present legal action in first instance before any court. As part of the requirements established here,

Customer's capacity to participate in a class action is limited. By agreeing to this Arbitration Procedure, Customer may be waiving constitutional or statutory rights.

i) **Right to Opt-Out.** CUSTOMER MAY OPT OUT OF THIS ARBITRATION PROVISION (EXCEPT FOR THE SUB-SECTION TITLED CLASS ACTION WAIVER AND OTHER RESTRICTIONS) BY NOTIFYING DQE WITHIN THIRTY (30) DAYS OF THE SERVICE COMMENCEMENT DATE. CUSTOMER 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 **LEGAL@DQE.COM**. OPTING OUT WILL NOT AFFECT ANY OF THE OTHER TERMS OF THIS AGREEMENT WITH DQE. IF YOU HAVE PREVIOUSLY OPTED OUT OF THIS ARBITRATION PROVISION, YOU WILL NOT BE REQUIRED TO DO SO AGAIN.

ii) **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 Customer and DQE.

iii) **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 termination of the Agreement. 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 at www.adr.org or by calling 1-800-778-7879. However, applicable federal law or Pennsylvania law will provide the substantive law governing any Dispute. 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 Agreement, this Arbitration Procedure will apply.

iv) **Arbitration Procedure.** All Disputes will be arbitrated by the American Arbitration Association ("AAA"): 335 Madison Ave., Floor 10, New York, NY 10017; (800)778-7879; www.adr.org. 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 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 Customer 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 to 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.

v) **Arbitration Restrictions.** ALL DISPUTES COVERED BY THIS ARBITRATION PROCEDURE MUST BE FILED AND SUBMITTED TO ARBITRATION NO LATER THAN NINETY (90) DAYS 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 NINETY (90) DAYS 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 DQE pursuant to the Notice provisions of this Agreement.

vi) **Arbitration Location, Fee Payment and Charges.** The arbitration will take place in Pittsburgh, Pennsylvania. DQE will pay the filing fee for the arbitration, and the arbiters' costs and expenses. Customer will be responsible for any additional costs incurred for the arbitration, including 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.

vii) **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, THE PARTIES AGREE TO THE MAXIMUM EXTENT PERMITTED BY LAW, TO WAIVE THE RIGHT TO A JURY TRIAL AND CLASS ACTIONS.

viii) **Final Decision.** The panel's decision will be final and binding, except for any appeal rights that exist under the FAA, and Customer waives all further rights under law or equity except for enforcement of the arbitration decision.

ix) **Exclusions.** You and DQE agree that any claim filed by either Party that is not aggregated with the claim of any other subscriber, and whose amount in controversy is properly within the jurisdiction of a Pennsylvania Magisterial District Judge, 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, claims by DQE for Customer's nonpayment of uncontested Service Fees, and claims related to theft of service will not be subject to arbitration.

14. 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 (except for notices of Default, termination, or change in notice address), to the Parties at the addresses identified on the signature page or as otherwise updated during the Term.

15. GOVERNMENT REGULATION.

Customer recognizes that certain Services provided under this Agreement may be telecommunications services subject to regulation by the Federal Communications Commission or the applicable state public utility agency. 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 or regulations.

16. 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.

17. 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; and (iii) this Agreement. 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. In the event of any ambiguity or uncertainty in the interpretation of this Agreement, such ambiguity shall not be construed against the party that drafted this Agreement. Within the Agreement: (i) the singular shall include the plural and vice versa; (ii) “or” shall mean “and/or”; and (iii) “including” shall mean “including but not limited to”.

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 .

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 directly or indirectly transfer its rights hereunder or any interest herein by assignment or operation of law without the prior written consent of DQE in its sole discretion.