

DQE COMMUNICATIONS GENERAL TERMS AND 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.** In addition to the terms and conditions of this Agreement, additional terms and conditions that apply to each type of Service being rendered by DQE are set forth in standard service schedules (each a “Service Schedule”) which are incorporated by reference into each Customer Service Order as applicable. The Service Schedules are available at www.dqecom.com and may be updated from time to time by DQE.
- 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 DQE’s Acceptable Use Policy, as published at www.dqecom.com and updated by DQE in its discretion.

2. TERM AND TERMINATION:

- A. Agreement Term.** Each Renewal Term of this Agreement shall automatically commence 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.
- B. 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.
- C. 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.
- D. 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.

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

3. PAYMENT AND CREDIT:

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

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

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

4. EQUIPMENT/FACILITY INSTALLATIONS:

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

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

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

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

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

5. CONFIDENTIALITY AND USE AND DISCLOSURE OF CUSTOMER INFORMATION:

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

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

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

6. INDEMNIFICATION:

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

7. LIMITATION OF LIABILITY:

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

8. DISCLAIMER OF WARRANTIES:

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

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

9. INSURANCE:

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

10. FORCE MAJEURE:

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

11. DISPUTE RESOLUTION:

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

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

12. NOTICES:

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

13. GOVERNMENT REGULATION:

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

14. GOVERNING LAW/JURISDICTION

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

15. ENTIRE AGREEMENT

- A.** This Agreement, the applicable Service Schedule(s) and Customer Service Order(s), 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 applicable service tariff within the relevant jurisdiction; (ii) the Customer Service Order

but solely with respect to the Service covered by that Customer Service Order; (iii) the Service Schedule but solely with respect to the Service covered by that Service Schedule; and (iv) this Agreement.

- B.** A Party's failure to enforce a provision at one time shall not constitute a waiver of compliance with such provision, and a Party's waiver of a breach of any provision contained in this Agreement shall not constitute a waiver of any other breach or of any subsequent breach of the same provision. No waiver, consent, modification, amendment or change of the terms contained in this Agreement shall be binding unless made in writing and signed by both Parties.
- C.** 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.

16. SEVERABILITY

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.