

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.
 - D. **Provider** – DQE’s third-party provider responsible for providing wireless network connectivity and services to support Wireless Access Service.
3. **USAGE CHARGES.** Monthly usage charges will be calculated based on data consumed (used) in addition to the MRC. Within any particular monthly billing period, Customer may be required to provide authorization to move up to a new usage interval and use additional data. DQE reserves the right to cap Customer’s data usage, in its sole discretion, and DQE may require a Customer to provide a deposit prior to the availability of additional data usage. Data intervals are an approximate usage range and DQE reserves the right to change data interval ranges, in its sole discretion. Calculation of a Customer’s data usage will restart for each monthly billing period.
4. **DELIVERY AND ACCEPTANCE.** Wireless Equipment will be delivered to the Customer location in the Customer Service Order. For Customer Service Orders within the Greater Pittsburgh Region, DQE will deliver and install the Wireless Equipment. For Customer Service Orders outside of the Greater Pittsburgh Region, DQE will mail or deliver the Wireless Equipment to the Customer location and Customer shall be responsible for installation. For Customer Service Orders outside of the Greater Pittsburgh Region, installation by a DQE subcontractor may be available for an additional one-time installation charge. Service shall be deemed accepted and all fees will accrue beginning upon the date the Wireless Equipment is turned on and is connected to the Internet (the “Service Commencement Date”). For Wireless Equipment delivered to Customer site but not connected to the internet within seven (7) days from date of delivery, DQE shall start billing for the Service upon the eighth (8th) day from date of delivery.

5. CUSTOMER OBLIGATIONS.

- A. Limitations.** Customer shall use the Wireless Equipment solely in conjunction with DQE Wireless Access Service at the location specified and only for transmission of information within the continental United States. The Wireless Access Service is to be used exclusively for low bandwidth communications. Customer shall not use the Service for web hosting, video or audio streaming, hosting of computer applications, support of emergency services, support of remote medical monitoring, support of aerial manned vehicles, alarm calls, routines that generate excessive amounts of data traffic, or traffic that adversely affects people or systems (including DDoS attacks against other networks). Customer shall not use regeneration equipment in conjunction with this Service. DQE or third-party service provider reserves the right to throttle, disengage service, or cap data usage when it negatively impacts the network.
- B. Monitor and manage use of the Service.** The Service shall be used solely as a backup to Customer's primary internet service. The Service shall not be used when there is not an actual service interruption of the primary service. Customer is responsible for all charges related to use of Service, whether accidental or intentional.
- C. Backup of Files.** Maintain a backup system for the duplication of all electronic files and documents. DQE is not responsible for the backup of Customer's electronic files and documents, nor liable for any data loss during performance of the Service.
- D. Maintain its own privacy and security controls for all content.** Customer shall be responsible for ownership and control of all content transmitted through the Service. Neither DQE, nor its underlying third-party supplier, shall be responsible for privacy or security of any transmission. Any unauthorized access or interception of data is solely the responsibility of Customer.

6. EQUIPMENT. Customer acknowledges the following:

- A. Wireless Equipment.** Equipment For Customers within the Greater Pittsburgh Region, DQE will replace Wireless Equipment in person upon availability. For Customers outside of the Greater Pittsburgh Region, DQE shall mail replacement 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 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 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 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.