

General Terms and Conditions

- **1. This Agreement**

This Agreement applies to all DTS customers. It comprises the following parts which, in the event of any inconsistency, will apply in descending order of precedence:

- the completed application form (as varied from time to time)
- the terms and conditions set out below.

- **2. Acceptance of Your Application**

Applying for any DTS products or services does not guarantee that the products or services will be provided to you. We will process your application and, if accepted, shall begin supplying the necessary products or services as they become available. DTS reserves the right to decline your application without giving a reason.

- **3. Your Responsibilities**

- **3.1 Gaining Access to the Internet**

Except as otherwise provided in this Agreement, you are responsible for providing the computer, hardware, software and all other equipment required to use the services.

- **3.2 Your Use of the Services**

At all times during the term of this Agreement you will:

- comply with (and ensure that anyone else who uses the services complies with) these terms and conditions, and such system operating procedures, instructions, and acceptable use requirements, as notified by us to you, from time to time
- ensure your use of the services does not interfere with, or disrupt, the DTS network
- not use the services for any unlawful or offensive act
- not use the services to publish or distribute any information, software, or other material, which is unlawful, or which a reasonable person would consider offensive, abusive, or defamatory
- not use the services to distribute multiple unsolicited electronic mail to large numbers of persons including, but not limited to, electronic mail advertisements (spamming)

- not use the services to gain or attempt to gain unauthorised access to any computer systems, or in a manner which infringes the rights of any person
- take all reasonable care (in accordance with industry accepted standards of best practice) to prevent the spread of viruses, or contamination by virus, of any software or hardware operated by any other person on the Internet, our system included
- be responsible and liable for any use (authorised or unauthorised) of the services by any other person (including any charges associated with that use).

▪ 3.3 Notification of Change of Personal Details

You must notify us immediately if any of your personal details change.

▪ 3.4 Reasonable Use

If any clients use of their free traffic allocation is at a such an extreme level that it negatively impacts on the performance of the DTS network and therefore other clients internet experience, we reserve the right to enter into consultation with the client in question, and if that consultation proves fruitless, then we reserve the right to rate shape aspects of the service in question and/or disconnect the account completely.

▪ 3.5 IP Advertisement

Clients are not authorised to advertise DTS provided IP address space to any third party network(s) unless they have express permission from DTS management.

▪ 4. Our Rights

If we receive a complaint (which does not necessarily need to be substantiated), or we form our own opinion to the effect that you are, or may reasonably be said to be, in breach of the usage rules contained in clause 3.2 then we may, after consulting with you:

- require you to edit the material in question, or edit that material ourselves
- delete the material in question
- suspend the Services or use of relevant products for an indefinite period
- treat that breach as a material breach and terminate the Agreement in accordance with clause 14.3 below.

▪ 5. Provision and Use of the Email Services

- **5.1** We aim to deliver your email to the destination to which it is addressed whenever this is reasonably possible.
- **5.2** We will retain ownership of any DTS email address that is allocated to you as part of the Services. In the event that this Agreement is terminated, we may allocate that DTS email address to another customer.
- **6. Your Security Obligations**
 - **6.1** If we will allocate you a password to enable you to use the services, you:
 - must maintain the security of the password
 - must advise us as soon as you become aware of any misuse or breach of security in relation to the password
 - you will be liable for any use (authorised or unauthorised) of the services by any person using the password, including any charges associated with that use.
- **7. Our Responsibilities**
 - **7.1** We will strive to provide reliable and high-quality services, 24 hours a day all year round. We are, however, unable to guarantee that our services will be uninterrupted or fault free.
 - **7.2** In the event of an interruption in the services, that is caused by a fault in our supply of services, we will take all reasonable measures to restore the services as soon as possible. We are not responsible for fixing faults that occur because of faults in your equipment, or because you have used the services incorrectly, or because of any other event beyond our reasonable control, including, but not limited to, problems with the internet.
 - **7.3** We are not responsible in any way for the content or quality of the material that you obtain from the internet as a result of your use of the services.
 - **7.4** DTS will strive to ensure the fastest possible speeds over all circuit types, however ADSL2+, VDSL, UFB BS2, UFB BS2a, UFB BS3, and UFB BS3a are all best effort services over which speeds are not guaranteed. Advertised speeds on these services are advertised on an “up to” basis and are in no way considered to be commitments on the part of DTS.

- **7.5 Service Level Agreements**

Service levels will be subject to and provided in accordance with supplier SLA (Service Level Agreement) terms, ensuring the best resolve times are always met.

- **8. Domain Names**

- **8.1** You will retain ownership of any domain name which you use in connection with the services, and which is registered in your name with any domain name registry. Where we agree to register a domain name with any domain name registry on your behalf, we do so as your agent. You are responsible for complying with any terms and conditions imposed by the relevant domain name registry, including payment of registration charges (unless we have entered into an alternative arrangement with you).
- **8.2** Mailbox sizes will be limited to 100MB as a standard measure. For larger sizes, please speak to our sales staff for pricing.
- **8.3** The limit for individual email size is 20MB. Email above this size will not pass through the email server and as such, should be communicated otherwise.
- **8.4** If you do not have DTS internet or voice services, but have a domain name with us, you will be liable for monthly hosting charges.
- **8.5** DTS invoices domain names 3 months in advance. This allows time for cancellations to be processed where applicable, as we are required to provide 1 months' notice (prior to renewal date) for cancellation of any domain name.

- **9. Privacy**

- **9.1** You agree that DTS can collect information about you and the ways in which you are using the services. DTS will obtain this information directly from you, from our customer records and from the records generated within our equipment when you use our services.
- **9.2** You agree that DTS may hold this information about you and may pass it on to our employees, contractors, agents and business partners for a range of lawful purposes connected with our business operations, which include:
 - providing you with services

- administering your account
 - looking at ways in which we can improve the services
 - keeping you informed as to the products and services (both existing and new) that are available to you from DTS.
- **9.3** If you wish to limit the ways in which DTS uses information about you, it is your responsibility to let us know. You acknowledge that placing limits on how we use information about you could restrict our ability to provide you with a full range of services, including new products and services and enhancements to existing services.
- **9.4** You agree that DTS may monitor and/or record calls made between you and DTS for the purpose of maintaining and improving the quality of the services.
- **9.5** You may ask to see information that DTS holds about you (where that information is being held in such a way that it can be readily retrieved) and for DTS to take reasonable steps to correct any errors.
- **9.6** DTS will not use information held about you without first taking reasonable steps to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, complete, and accurate.
- **9.7** Pursuant to Privacy Principle 11 (Privacy Act 2003), we may disclose information about you to law enforcement authorities (such as the Police or the Department of Internal Affairs) if we think that it is necessary to help maintain the law.
- **10. Charges and Payment**
 - **10.1** The charges for the services will be calculated in accordance with the pricing options that you have selected.
 - **10.2** Charges for all services will apply from the date they are made available for use, so long as that date is in accordance with the contracted service start date. The date from which the client chooses to utilise the service has no bearing on the billing start date. Fixed charges will be payable in advance. Any additional charges will be payable

in arrears.

- **10.3** We will send your account for any additional charges to your nominated 'Invoicing' email address (or to such other address as may be agreed by us).
- **10.4** Payment for all charges is due on the 20th of the month following invoice date.
- **10.5** If you believe that a mistake has been made on your account, you must notify us before the due date for payment.
- **10.6** We reserve the right to back-bill you for any services provided. You are responsible for paying charges for services, even if the charges were omitted from your prior account(s) in error.
- **10.7** You will be liable for any fees or expenses which we reasonably incur in collecting overdue amounts from you, including collection agent fees, legal expenses and all bank charges in relation to dishonoured payments.
- **10.8** We may change our charges from time to time. We will provide you with at least 10 days' notice of any changes, by writing to you at your nominated email address (or to such other address as may be agreed by us).
- **10.9** Depending on your contract wording and what options you have selected, a 12, 24, 36 month or longer minimum term may apply to your new DTS contract. Contract terms apply from the day your services are available for use. If your DTS contract is terminated before the end of the specified contract period, you will be required to pay each of the remaining monthly fees in full (Early Termination Fees – 'ETCs') within 30 days of termination. This clause applies if you (the client) closes the account of your own free will, or if DTS closes the account due to repeated violations of DTS's terms and conditions, and/or a failure to comply with reasonable requests made by our staff in relation to these violations. Clients who have their DTS service(s) suspended through the enforcement of the Copyright (Infringing File Sharing) Amendment Act 2011 No 11 will also be required to continue paying their DTS charges as outlined in their contract for the remainder of their contractual term. Contract terms apply to a physical circuit and the data supplied through it.

- **10.10** Any upgrades or downgrades to the speed of a contracted circuit do not alter the terms of the initial contract, unless a new contract is entered.
- **10.11** If bound by an initial contract term, upon the initial periods' expiry, your plan will roll over on a month-by-month basis. Some circuit providers charge an extra 20% on monthly circuit costs if you do not sign into another contract, you will be liable for such charges, as on-charged by DTS.
- **10.12** DTS's Assured Forwarding (AF) product has a standard 12-month contract term. This contract can be terminated with 30 days' notice, but an early termination fee of \$500 will apply at any time within the initial 12 months.
- **10.13** Domain names are invoiced three (3) months in advance. Should a client need to cancel their domain name, they have until one (1) month before the renewal date stated on their invoice to do so, before it's automatically renewed. From one (1) month before the date of renewal DTS are charged by the supplier and have no choice but to on-charge this regardless of whether the customer has cancelled their domain name or not.
- **10.14** Where a client has exceeded their data quota for a given month, retrospective upgrades may be provided. Alternatively, over usage charges are billed at \$0.01c/Mb. Retrospective upgrades are offered at the discretion of DTS, unless specifically stated to the contrary in the clients contract for service. If a client exceeds their monthly data quota three times in a row or six times in a calendar year, they will be required to either permanently upgrade their data plan or forego the offer of a retrospective upgrade in future instances of over usage, resulting in higher over usage charges. In the event that a client provides notice that they wish to terminate their DTS service, they will not be eligible for retrospective upgrades for the remainder of their notice period.
- **10.15** Unlimited data plans apply on a per circuit basis unless explicitly stated otherwise in the relevant service contract. Additional locations are not allowed to use a single unlimited service as a default gateway unless this is explicitly stated to be an intended service design outcome in the relevant service contract.
- **10.16** Please note, if during a fault investigation, it's found that the fault occurred through no error of the upstream provider, we will have no choice but to on-charge

any fault-finding fee billed to DTS by the supplier.

- **11. Our Indemnity**

- **11.1** Notwithstanding any other provision contained in this Agreement, you agree to indemnify us, and keep us indemnified, against all loss, cost, damage, or expense resulting from any claim made against us by any third party as a direct result of your use of the services, including material that is generated or disseminated by you through using the services.
- **11.2** It is the responsibility of the Customer to ensure it maintains suitable insurance cover for any server, or other property of the Customer's, that is placed in DTS's possession for the purpose of providing services under a DTS Agreement, or for any losses to the Customer, or any third party, that be consequent on any failure, or disruption, of the Services provided by DTS under this Agreement.

- **12. Our Liability**

- **12.1** To the extent allowable by law, we will not be liable for any special, indirect, or consequential loss or loss of profits, including any loss incurred by you as result of lost or corrupted data.
- **12.2** Our maximum liability to you in respect of the services will be \$500 for any event or series of related events, and \$1,000 for all events in any 12-month period.
- **12.3** This exclusion does not affect any of your legal rights under New Zealand and Australian law. You agree that the Consumer Guarantees Act 1993 (NZ) and the Commonwealth Trade Practices Act 1974 (Australia) and the Consumers Guarantees Act July 2010 (Australia) may not apply if you are using or holding yourself out as using the services for the purposes of a business.
- **12.4** Except as expressly stated, this Agreement does not confer any rights on third parties. To the extent allowable by law, we will not, under this agreement, be liable in any way to any third parties.

- **13. Ending the Services**

- **13.1 Your right to terminate**

If your service is out of contract you may terminate your Agreement with us, notwithstanding clauses 10.9 and 13.2, by giving thirty (30) days' notice by emailing

us at accounts@dtsanz.com.

- **13.2 Acquisition of circuit or other Leased or Rented Product or Service**

If DTS has acquired a circuit, or leased or rented a product on your behalf, your right to terminate could require a longer notice period dependent upon the term of the circuit supplied. Circuit providers require thirty (30) days' notice, upon signing a DTS application form you are agreeing to abide by these notice periods regardless of their length.

- **13.3 Our right to terminate**

We may terminate this Agreement at any time if you do not pay our charges or meet your responsibilities under this Agreement, or if you are abusive to our staff. We may end this Agreement for any other reason by giving at least seven (7) days' notice in writing to you, to your nominated email address (or to such other address as may be agreed by us).

- **13.4 Consequences of termination**

On termination of this Agreement, none of your obligations or our rights prior to termination shall be affected. Any of these terms that are intended to apply after termination will continue to apply.

- **13.5 Cancellation of orders prior to completion**

Any cancellation of an order prior to circuit completion will incur either the full installation charge as stated in the signed agreement, or a charge equivalent to the order withdrawal fee charged to DTS by the carrier, with the higher cost applying.

- **14. General**

- **14.1 Amendments**

We may vary this Agreement at any time. We will do this by giving you written notice of such changes, sent to your nominated email address (or to such other address as may be agreed by us) at least five (5) working days before the changes take effect.

- **14.2 Transfer of rights**

We may transfer our rights and obligations under this Agreement. If we do this, we will give you notice. You may not transfer any of your rights or obligations under this Agreement.

- **14.3 Whole agreement**

This Agreement contains the whole agreement between us for the provision of the services, and any previous agreement is revoked by this Agreement.

- **14.4 Severance**

If for any reason any term of this Agreement cannot be enforced or relied upon, all other terms of this Agreement shall remain valid and binding.

- **14.5** By signing with DTS, unless specifically requested not to occur, you are providing permission for DTS to promote information on our business dealings with you. This information may be broadcast in a number of ways, but primarily through social media and email. DTS will not disclose specific information about pricing arrangements, or any other matter deemed to be confidential in nature.

- **14.6 Consent/Unsubscribe**

By signing with DTS, unless specifically requested not to occur, you are agreeing to receiving marketing and promotional material, along with product updates and alert notifications to the nominated primary contact person listed within your agreement. All notifications come with an unsubscribe option for your perusal.

- **14.7 WiFi / Wireless Connectivity**

DTS does not natively support WiFi services in conjunction with DTS internet connectivity. In the instance where DTS provides a router with WiFi capabilities, it is understood that the WiFi functionality is purely a 'best effort' service and, as such, falls outside of DTS' direct management or control. We recommend Access Points (purchased directly by the customer) in the event a customer wishes to utilise enhanced WiFi services.

- **14.8 DDoS Protection**

DTS provides DDoS (Distributed Denial of Service) protection as part of our general internet service offering to all customers throughout New Zealand and Australia. DDoS protection ensures any potential malicious DDoS attacks via our IP Transit Carriers are prevented before reaching end customer networks. It is highly recommended that the customer also has suitable network security measures in place locally as an additional layer of security.

- **14.9 Managed Firewalls**

DTS does not allow third-party access to managed firewalls, unless otherwise specified within your DTS contract.

- **14.10 4G Fixed Line Fail-over**

DTS does not guarantee 3G or 4G service in any area. This service is not available in all areas and is not free from faults or interruptions and may not be able to be used in some buildings, or at certain times. Coverage will be affected within covered areas by, but not limited to, local obstructions, radio interference and location and signal strength of antenna.

Excess data charges will be billed on a per Mb basis and is metered both inbound and outbound.

A New Zealand mobile number will be provided with this service, and it is not able to be ported. The SIM card and the 4G modem supplier will always remain the sole property of DTS.

- **14.11 111 Contact Code**

Effective 1 March 2022, DTS are required to adhere to the rules and regulations as set out by the Commerce Commission, as well as the Telecommunications Disputes Resolution (TDR), whereby we need to ensure that any home and small business customers who use our voice services, but are deemed 'vulnerable' users, still have the ability to make emergency (111) calls, should your DTS supplied voice service be inactive for any reason.

A 'vulnerable' customer can be defined by one of the following:

- They rely on a home/business phone through a fibre, wireless network, or voice over internet protocol (VoIP) to be able to call 111, or
- They do not have an alternate way to contact 111, such as a mobile phone or fixed copper landline service, or
- They can demonstrate that they are at particular risk of requiring 111 emergency services for health, disability, or safety reasons.

If you fall into the 'vulnerable' category, you are required to notify us immediately. DTS will then organise to provide you with the means to make an emergency call in the event of a power outage or similar.

- **15. Our Equipment**

- **15.1** If you have asked us to provide services that require location of our equipment at your premises, you agree to give our representatives safe access to your premises so that we can install, inspect, maintain, replace, or remove our equipment. If you are in rented premises, you will obtain the written permission of the owner that we are authorised to access and locate our equipment at your premises for these purposes.
- **15.2** We will always ensure our equipment is safe, free from defects and fit for the purpose for which it is provided.
- **15.3** You agree:
 - to provide a safe and secure operating environment for our equipment
 - to take reasonable precautions to protect our equipment from radio or electrical interference and power fluctuations
 - not to damage or interfere with our equipment
 - to pay our charges for repairing or replacing any of our equipment that is lost or damaged while located on your premises and, if we ask you, to obtain and maintain insurance (to a value agreed by us) with a reputable insurance company against any loss or damage to our equipment while under your control. You will ensure that our interest is noted on the policy.
- **15.4** If our equipment is no longer required, or if you damage or interfere with our equipment, then we may request the removal and/or return from your premises - at the customers' cost, as per 15.5.
- **15.5** If DTS has leased you a router/modem as part of your internet agreement, this equipment remains the property of DTS at all times. If this equipment is damaged through force majeure, or fails due to natural wear and tear, DTS will replace it without charge. If, however, it is damaged, destroyed or lost, due to carelessness or misuse, a replacement cost will apply. Upon termination of your service, DTS requires the device to be returned within thirty (30) days, with the cost of doing so to be paid by the client.
- **15.6** A leased router is not to be confused with a managed service. In the leased scenario, all backups and configurations are the responsibility of the end user, as are all MAC's.

- **15.7** If you are renting a managed router through DTS, it is your responsibility to ensure the router is kept safe and is not interfered with in any way. If the router is broken or damaged due to anything other than general wear and tear and/or a technical fault, you will be liable for the cost of replacement.
- **15.8** In the event you choose to end your rental agreement with DTS, you are required to courier the router back to DTS at your cost within seven (7) working days.
- **15.9** If you have contracted DTS to provide you with a managed router configured in bridge mode, you are in turn accepting that DTS is unable to remotely manage that device. In the event that it appears to be faulty, we will need it sent back to us and a replacement router will be issued.
- **15.10** DTS does not allow third-party access to managed Firewalls.
- **16. Your Equipment**
 - **16.1** You will ensure that all of your equipment connected to the DTS network and/or to our equipment is tele permitted and is installed in accordance with our specifications.
 - **16.2** You agree to follow our reasonable instructions about modifications that you may need to make to your equipment, so that you can use the services.
 - **16.3** Notwithstanding anything else in this Agreement, if your equipment causes a fault in the operation of a service you will, if we ask you to, pay us the reasonable costs of restoring that service.
 - **16.4** Any equipment placed on site by a circuit supplier on behalf of DTS for the use of the customer, is the responsibility of the customer. If this equipment is damaged in any way, the customer will be liable for the repair or replacement of that equipment.
- **17. Numbers, Addresses and Other Codes**
 - **17.1** We may allocate phone numbers, electronic addresses, and other codes to you. You will not have any ownership rights over those numbers, addresses and/or codes, and you may not transfer them to anyone else.

- **17.2** If required by law, or if it is necessary to do so for operational reasons, we may change any phone number, electronic address or code allocated to you. However, we will always give you as much notice as is reasonably possible regarding any such change.
- **18. Definitions**
 - **Agreement**
has the meaning set out in clause 1.1.
 - **Billing period**
means the number of days to which your set allowance of traffic relates (in each case, as specified in your pricing plan).
 - **DTS**
means DTS Limited and/or Data Traffic Services Pty Ltd.
 - **Pricing plan**
means the service(s) you have selected and the applicable charges (as varied from time to time) and forms part of this Agreement.
 - **Services**
means any service(s) offered by DTS, including, but not limited to, internet access and/or webhosting, email services, and that are selected by you from time to time.
 - **DTS network**
means the telecommunications network used by DTS to provide communications services (including any network to which DTS interconnects).
 - **Us, We and Our**
means DTS Limited and/or Data Traffic Services Pty Ltd.
 - **You**
means the person(s) named on the completed DTS application form, as the account holder and (if applicable) the co-account holder, both jointly and severally.
- **19. Support Charges**

- **19.1** If at any stage you request Support tasks to be completed, you will be charged as per our rates quoted. Support tasks consist of but are not limited to; any changes to A Records, MX Records, PTR Records, Reverse DNS, Domain Name Registration, Domain name Renewals, Port Forwarding, Mailbox Changes, SMTP changes/requirements, IP Address changes and Multiple IP requirements.
- **19.2 Hosted Service Modification**
 - **DNS Requests:**

This covers, but is not limited to A Records, MX Records, PTR Records, Reverse DNS, Domain Name Registration and Port Forwarding and cost \$10.00 (excl. GST) per request.
 - **Domain Name Renewals:**

This covers the annual renewal of any Domain Name you have with DTS. Domain names are separated into three categories (1, 2 and 3), with pricing listed on our Hosting page.
 - **Mailbox Requests:**

These covers, but are not limited to, Mailbox and/or SMTP changes/requirements and cost \$10.00 (excl. GST) per request.
 - **IP Requests:**

This covers IP Address changes and Multiple IP requirements. Prices vary for these; please contact us for a quote.
- **19.3 Faults caused by external issues**

Support jobs or fault calls that DTS receives, which after investigation are found to be the result of an external (to DTS) issue; may be charged to the Customer at our hourly rate of \$119.00 (excl. GST) within business hours, or \$199.00 (excl. GST) outside of business hours. This charge will only be issued where a single customer continually raises instances as outlined in clause 19.3, or a single issue as outlined in clause 19.3 takes an unreasonable amount of DTS's time to resolve.
- **19.4 Public Holiday Support**

Public holiday work must be by mutual agreement and will be charged at a different rate. Work done out of hours is charged at a higher rate per hour. DTS does not

guarantee support availability on public holidays.

- **19.5 Scheduled Weekly Maintenance**

All customers please be aware that there is a nominal outage period every week that will be reserved for DTS network maintenance. During this time, you may find that your services are inoperative for anywhere up to four hours. DTS reserves the right to make unavailable any and/or all network components during this time without any further warning where maintenance is necessary. The nominated timeframe will be static and exact. No outage will continue past the closing period of this time frame and any instance of this will be treated as a critical priority job. The details of this time frame are as follows:

The weekly maintenance period is SUNDAY NIGHT 2200 HOURS (10PM) until MONDAY MORNING 0200 HOURS (2AM).

- **19.6 Planned Work**

DTS will endeavour to provide at least five (5) business days' notice to customers, before proceeding with any Planned Work, both within and out of business hours. Notifications will be sent to customers' nominated email address(es).

- **20. National and International Traffic Measuring**

Traffic is deemed to be International unless it meets the following criteria:

- 1. DTS's upstream internet service provider(s) advertise the IP address (or range of IP addresses) over a national network interconnect.
- 2. DTS's receives the IP address (or range of IP addresses) over a peering point (such as, but not limited to, WIX or APE).
- 3. The IP address is connected to a device within the DTS network.
- 4. DTS will endeavour to notify clients on a best effort basis as usage reaches 80%, 100%, and 120% or their data plan cap, this notification will be sent to your nominated email address.

DNS is not used to classify IP addresses (or range of IP addresses) as national or international. Due to the nature of dynamic routing updates, an IP address (or range of IP addresses) may or may not be classified as a national IP address periodically (this process is outside of DTS's control). To improve throughput speeds, DTS may, from time-to-time, route traffic nationally that would otherwise be sourced internationally. This traffic will still be considered internationally sourced.

- **21. Sentinel**

Sentinel is not supported by DTS. Any residual accounts remaining have no support and, as such, we recommend using alternative methods for service monitoring.

- **22. Data Rollover**

Free data rollover applies for a period of one month as standard on all plans unless otherwise stated in the customers' contract. Any unused portion of a month's data quota will be available the following month without additional charge. If that data goes unused for a second month it will no longer be available and will be removed from the customers' records.