

Digital Towpath Cooperative Agreement for Services

This agreement contains the terms and conditions that govern access to and use of the Digital Towpath Technology Shared Service tools and services (DTP) as listed in Section 1 of this agreement.

The agreement is an intermunicipal shared services agreement between the towns, villages or other entities registered with DTC (Members).

This agreement takes effect when the duly authorized representative of the Member (Administrator) registers with Digital Towpath at digitaltowpath.org/SignUp and supplies the required proof of the Member's authenticity and the Administrator's authority to act on its behalf. As is the case with all New York State intermunicipal agreements, the initial agreement extends for a maximum term of five (5) years; however, the DTC and its Members recognize and accept that this Agreement is also renewed each year by the Member's payment of its Annual Fee invoice pursuant to the board action authorizing that payment.

Section 1: DTP tools and services

1.1 The shared resources include:

- website content management software (CMS)
- hosting of the resultant website
- server space for storage and management of electronic files, if the Member has registered for this service (ERMS)
- ERMS software environment
- municipal email hosting
- server space for storage and management of email messages sent or received through hosted email domains, if the Member has registered for this service (EAS)
- the DTC hardware and bandwidth required to support these systems
- administrative support
- technical support
- DTP system maintenance
- Other resources and/or future services as approved by the DTC Membership
- Unless a Member opts out of this service, the DTC also obtains and manages the Member's

domain and/or DNS.

1.2 Use of DTP

- (a) Generally. The Member may access and use DTP in accordance with this Agreement. All End Users authorized by an Administrator to access the Member's DTP domain will adhere to all laws, rules, and regulations applicable to the Member's use of DTP.
- (b) Accounts. Access to DTP is through End User accounts established by the Member's Administrator except that Digital Towpath staff will cause DTP to generate a user account for at least one Administrator at the time of the Member's registration or, with proper authorization, in the course of a support matter. More than one Administrator may be necessary for the Member's access to all tools and services. All user accounts must be associated with a valid e-mail address. The Member is responsible for all activities that occur through an End User account associated with the Member's domain, regardless of whether the activities are undertaken by an Administrator or any other End User account (including the Member's contractors or agents) established for the domain and, except to the extent caused by DTC's breach of this Agreement, DTC is not responsible for unauthorized access to the Member's DTP domain through a properly established End User account. The Administrator will contact DTC immediately if it is believed that an unauthorized third party may be using an End User's account or if an End User's account information is lost or stolen. The Member may terminate its DTP domain and this Agreement at any time in accordance with Section 7.
- (c) Support to Administrators and Other End Users. Support is provided by DTC staff through the DTC service portal at servicedesk.digitaltowpath.org. There is no additional fee for support and no limit to the number of support requests a Member may make. All requests for support will be answered as quickly as DTC resources allow.

Section 2: Changes to this Agreement

DTC may change this agreement from time to time, when authorized by action of the DTC Board, subject to ratification by the DTC Members attending a DTC Annual Meeting.

Section 3: Security and Physical Location

3.1 DTP Security

- a) DTC will implement reasonable and appropriate measures designed to help the Member secure its Content against accidental or unlawful loss, access or disclosure. DTC will keep such software and data backups as necessary to continue the operation of the DTC systems and tools using redundancy of resources to assure the authenticity and authorized accessibility of information stored on the DTC cloud. Individual email account contents are not backed up outside of the EAS.
- b) DTC will not allow access to a Member's DTP domain other than through an End User account established by a domain Administrator, except limited access by DTC staff assisting a domain Administrator or an End User within the domain. DTC staff will not, in any case, change access permissions for a user account or disclose the content of offline information a Member stores in

its DTP domain. An exception to this rule can be requested by an authorized official of the Member, in writing, whereby DTC staff can undertake limited changes to a Member's content, as directed.

3.2 Physical Location

The Digital Towpath private community cloud resides on DTC-maintained hardware and software resources within New York State. These resources are currently located within the secured data center of OCM BOCES, the CNYRIC, through an intermunicipal agreement between BOCES and DTC.

Section 4: Member Responsibilities

4.1 Member Content

Members are solely responsible for the Content they present to the public through DTC systems; and for the files they store in the CMS or ERMS. For example, Members are solely responsible for any claims relating to its Content and for the usability of its files. DTC is not responsible for migrating files stored in the ERMS from one platform to another as they age. The continued usability of data stored on the DTC cloud is the sole responsibility of the Member. Email messages can be archived in the DTC EAS, if the Member opts into that system, but are not otherwise purposefully retained by the DTC systems.

4.2 Other Security

Members are responsible for the security of their local technology and the files they upload to DTP. Files uploaded to the DTP, if infected through poor local security practice, should not, by design, infect other files within DTP but may infect computers to which they are downloaded. The Member is responsible for any consequences of allowing the download of infected files.

4.3 End User Violations

The Member is responsible for its End Users' use of its DTP resources. The Member will ensure that all End Users comply with its obligations under this Agreement and that the terms of its agreement with each End User are consistent with this Agreement. If the Member becomes aware of any violation of its obligations under this Agreement by an End User, it will immediately terminate such End User's access to its DTP domain.

Section 5: Annual Fees and Payment

The annual fee for access to DTP is set by the DTC on recommendation of the Finance Committee. Changes in fee structure are adopted by the DTC Membership at the Digital Towpath Cooperative Annual Meeting. Current fees can be found at <http://digitaltowpath.org/feeschedule>. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Payment of the annual fee will constitute renewal of Membership in the Digital Towpath Cooperative as outlined above.

Section 6: Temporary Suspension

6.1 Generally

DTC may suspend access to a Member's DTP domain or any End User's right to access or use any portion or all of DTP immediately upon notice to the Member if DTC determines:

- a) it poses a security risk to DTP or any third party, may adversely impact the systems or Content of any other DTP domain; may subject DTC, its affiliates, or any third party to liability; or may be fraudulent;
- b) the Member is in breach of this Agreement, if it is delinquent on its payment obligations for more than 45 days; or it has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension

If DTC suspends a Member's right to access or use any portion or all of DTP:

- a) it remains the Member's responsibility to pay all fees and charges it has incurred through the date of suspension;
- b) it remains the Member's responsible for any applicable fees and charges for any DTP services or tools to which it continues to have access;
- c) the Member will not be entitled to any fee reduction for any period of suspension; and
- d) DTC will not erase any of the Member's Content as a result of its suspension, except as specified elsewhere in this Agreement.

Section 7: Term; Termination

7.1. Term

The term of this Agreement will commence on the Effective Date and will remain in effect until terminated by the Member or DTC in accordance with Section 7.2.

7.2 Termination

- a) Termination for Convenience. The Member may terminate this Agreement for any reason by providing the DTC written notice from an authorized representative at least 30 days in advance of their annual fee renewal date. If this notice is not received by DTC at least 30 days before their annual fee renewal date, the Member will be responsible for the full amount of their next year's annual fee, regardless of the time they use DTP past the required notice period.
- b) Termination for Cause.
 - i. By Either Party. Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.

- ii. By DTC. DTC may also terminate this Agreement immediately upon notice to the Member for cause, if any act or omission by the Member or any End User results in a suspension described in Section 6.1, or if DTC believes providing access to the domain could create a substantial economic or technical burden or material security risk for DTC.

7.3. Effect of Termination

- a) Generally. Upon any termination of this Agreement:
 - i. all the Member's rights under this Agreement immediately terminate;
 - ii. The Member remains responsible for all fees and charges through the end of the annual renewal period;
- b) Post-Termination Assistance. During the 30 days following termination:
 - i. DTC will not erase any of the Member's Content as a result of the termination;
 - ii. however, the Member will be responsible for retrieving its Content from DTP within the 30 day post termination period.

Section 8: Proprietary Rights

DTC obtains no rights under this Agreement from the Member to its Content.

Section 9: Indemnification

The Member will defend, indemnify, and hold harmless DTC, its affiliates and contractors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning: (a) its or any End Users' use of DTP; (b) breach of this Agreement or violation of applicable law by the Member or any End User; (c) the Member's Content; or (d) a dispute between the Member and any End User.

Section 10: Disclaimers

DTP IS PROVIDED "AS IS." DTC AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE MEMBER'S DTP DOMAIN OR ITS CONTENT, INCLUDING ANY WARRANTY THAT DTP OR ACCESS TO CONTENT STORED WITHIN IT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING THE MEMBER'S CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

Section 11: Limitations of Liability

DTC AND ITS AFFILIATES WILL NOT BE LIABLE TO THE MEMBER FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER,

NEITHER DTC NOR ANY OF ITS AFFILIATES WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH:

- A. A MEMBER'S INABILITY TO USE DTP, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR THE MEMBER'S USE OF OR ACCESS TO DTP OR WITHOUT LIMITING ANY OBLIGATIONS UNDER THE AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS;
- B. THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY THE MEMBER IN CONNECTION WITH THIS AGREEMENT OR ITS USE OF OR ACCESS TO DTP; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF THE MEMBER'S DATA. IN ANY CASE, DTC'S AND ITS AFFILIATES' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT THE MEMBER ACTUALLY PAYS DTC UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

Section 12: Modifications to the Agreement

DTC may modify this Agreement at any time through the processes described in its Operational Regulations by notifying the Member in accordance with Section 13.3. The modified terms will become effective upon posting or, if DTC notifies the Member by email, as stated in the email message. By continuing to use DTP after the effective date of any modifications to this Agreement, the Member agrees to be bound by the modified terms. It is the Member's responsibility to check the Digital Towpath website regularly for modifications to this Agreement. DTC last modified this Agreement on the date listed at the bottom of each page of this Agreement.

Section 13: Miscellaneous

13.1 Force Majeure

DTC and its affiliates will not be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond DTC's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

13.2 No Third Party Beneficiaries

This Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

13.3 Notice

- a) To Member. DTC may provide any notice to a Member under this Agreement by: (i) posting a notice on the Digital Towpath website; or (ii) sending a message to the email address associated with the Member's account. Notices DTC provides by posting on the Digital Towpath website will

be effective upon posting and notices DTC provides by email will be effective when DTC sends the email. It is the Member's responsibility to keep its email address current. The Member will be deemed to have received any email sent to the email address then associated with its account when DTC sends the email, whether or not the Member actually receives the email.

b) To DTC. To give DTC notice under this Agreement, the Member must contact DTC as follows:

- i. By email to support@digitaltowpath.org from the email addresses associated with the Member in the DTC files or by registered or certified mail to Digital Towpath Cooperative, PO Box 449, Barneveld NY 13304.
- ii. DTC may update email address or mailing address for notices to it by posting a notice on the Digital Towpath website.

13.4 Assignment

The Member will not assign this Agreement, or delegate or sublicense any of its rights under this Agreement. Any assignment or transfer in violation of this Section 13.4 will be void. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties.

13.5 No Waivers

The failure by DTC to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit its right to enforce such provision at a later time. All waivers by DTC must be in writing to be effective.

13.6 Severability

If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

13.7 Entire Agreement

This Agreement is the entire agreement between the Member and DTC regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Member and DTC, whether written or verbal, regarding the subject matter of this Agreement. Notwithstanding any other agreement between the Member and DTC, the security and data privacy provisions in Section 3 of this Agreement contain DTC's and DTC's affiliates' entire obligation regarding the security, privacy and confidentiality of the Member's Content. DTC will not be bound by, and specifically object to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by the Member in any order, receipt, acceptance, confirmation, correspondence or other document.

Section 14: Definitions

“Content” means software (including machine images), data, text, audio, video, images or other content the Member or any End User uploads to DTP under an account established by the Member or otherwise transfers, processes, uses or stores in connection with the Member’s account.

“Digital Towpath website” means digitaltowpath.org and any successor or related site designated by us.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses a Member’s Content; or (b) otherwise accesses or uses DTP under an account established by the Member.