

Terms of Service

Revised: June 26, 2019

These Terms of Service ("**Terms**") govern your use of the UrbanSim, Inc. websites, including urbansim.com, cloud.urbansim.com, canada.urbansim.com, cloud.penciler.org, penciler.org, docs.penciler.org (each a "**Site**" and together, the "**Sites**") and any UrbanSim, Inc. mobile application, application programming interfaces, and other services offered by UrbanSim, Inc., including but not limited to, UrbanCanvas and Penciler, as well as services offered through third parties integrating UrbanSim, Inc. functionality ("**Services**"). UrbanSim, Inc. ("**we**" or "**us**") provides the Sites and Services. "**You**" refers to you as a user of the Sites or Services.

BY USING THE SITES OR SERVICES, YOU ARE AGREEING TO THESE TERMS. PLEASE READ THEM CAREFULLY.

1. Eligibility

You must be at least 13 years old to use the Sites or the Services. If you are under the age of majority in your state of residence, a minor, your parent or legal guardian must agree to these Terms on your behalf and you may only access and use the Sites and Services with permission from your parent or legal guardian.

2. Additional Terms

Some of our Services have additional terms and conditions ("**Additional Terms**"). Where Additional Terms apply to a Service, we will make them available for you to read through your use of that Service. By using that Service, you agree to the Additional Terms.

3. Acceptable Use of the Sites and Services

You are responsible for your use of the Sites and Services, and for any use of the Sites or Services made using your account. Our goal is to create a positive, useful, and safe user experience. To promote this goal, we prohibit certain kinds of conduct that may be harmful to other users or to us. When you use the Sites or Services, you may not:

- violate any law or regulation;
- violate, infringe, or misappropriate other people's intellectual property, privacy, publicity, or other legal rights;
- post or share anything that is illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- send unsolicited or unauthorized advertising or commercial communications, such as spam;
- engage in spidering or harvesting, or participate in the use of software, including spyware, designed to collect data from the Sites or Services;
- transmit any viruses or other computer instructions or technological means whose purpose is to disrupt, damage, or interfere with the use of computers or related systems;
- stalk, harass, or harm another individual;
- impersonate any person or entity or perform any other similar fraudulent activity, such as phishing;

- use any means to scrape or crawl any Web pages contained in the Sites;
- attempt to circumvent any technological measure implemented by us or any of our providers or any other third party (including another user) to protect the Sites or Services;
- attempt to decipher, decompile, disassemble, or reverse engineer any of the software or other underlying code used to provide the Sites or Services; or
- advocate, encourage, or assist any third party in doing any of the foregoing.

4. User Content

The Sites and some of our Services allow you to upload, submit, store, send, or receive content and data ("**User Content**"). You retain ownership of any intellectual property rights that you hold in that User Content. In other words, you own your personal data.

When you upload, submit, store, send, or receive User Content to or through the Sites or Services, you give us permission to reproduce and use your User Content as follows: you grant to us and those we work with a license to use, host, store, reproduce, modify, create derivative works (such as translations, adaptations, or other changes we make so that User Content works better with the Sites and Services), publicly perform, publicly display, and distribute your User Content. This license is for the limited purpose of operating, promoting, and improving the Sites and Services, and to develop new Services. Our license to your User Content is non-exclusive, meaning you may use the User Content for your own purposes or let others use your User Content for their purposes. This license is fully-paid and royalty free, meaning we do not owe you anything else in connection with our use of your User Content. We may exercise our rights under this license anywhere in the world. Lastly, this license is perpetual, meaning that our rights under this license continue even after you stop using the Sites and Services. In general, however, we will only need to use your User Content for as long as you choose to store it with us using the Sites or Services.

You promise that:

- you own all rights to your User Content or, alternatively, that you have the right to give us the rights described above; and
- your User Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party.

We may refuse to accept or transmit User Content for any reason. We may remove User Content from the Sites or Services for any reason.

5. Ownership

Other than User Content, we own or license all right, title, and interest in and to (a) the Sites and Services, including all software, text, media, and other content available on the Sites and Services ("**Our Content**"); and (b) our trademarks, logos, and brand elements ("**Marks**"). The Sites and Services, Our Content, and Marks are all protected under U.S. and international laws. The look and feel of the Sites and Services are copyright © UrbanSim, Inc., All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from UrbanSim, Inc.

6. Privacy

Your privacy is very important to us. Our Privacy Policy, which can be found on our website explains how we collect, use, protect, and when we share personal information and other data with others. You are

responsible for maintaining the confidentiality of your account information, including your username and password. You are responsible for all activities that occur under your account and you agree to notify us immediately of any unauthorized access or use of your account. We are not responsible or liable for any damage or loss related to any unauthorized access or use of your account.

7. Links

The Sites and Services may contain links to other websites and online resources. A link to a third party's website does not mean that we endorse it or that we are affiliated with it. We are not responsible or liable for any damage or loss related to the use of any third-party website. You should always read the terms and conditions and privacy policy of a third-party website before using it.

8. Changes to the Sites or Services

We enhance and update the Sites and Services often. We may change or discontinue the Sites or Services at any time, with or without notice to you.

9. Termination

We reserve the right to not provide the Sites or Services to any person. We also reserve the right to terminate any user's right to access the Sites or Services at any time, in our discretion. If you violate any of these Terms, your permission to use the Sites and Services automatically terminates.

10. Disclaimer and Limitations on Our Liability

YOU USE THE SITES AND SERVICES AT YOUR OWN RISK. THE SITES AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS OFFICERS, EMPLOYEES, DIRECTORS, SHAREHOLDERS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, AND LICENSORS ("**AFFILIATES**") DISCLAIMS ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT AND THOSE ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

IN PARTICULAR, OUR COMPANY AND ITS AFFILIATES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY OR COMPLETENESS OF CONTENT AVAILABLE ON OR THROUGH THE SITES OR SERVICES, OR THE CONTENT OF ANY WEBSITES OR ONLINE SERVICES LINKED TO OR INTEGRATED WITH THE SITES OR SERVICES. OUR COMPANY AND ITS AFFILIATES WILL HAVE NO LIABILITY FOR ANY: (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (b) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF THE SITES OR SERVICES; (c) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SERVERS OR OF ANY PERSONAL INFORMATION OR USER DATA; (d) ANY INTERRUPTION OF TRANSMISSION TO OR FROM THE SITES OR SERVICES; (e) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE SITES OR SERVICES BY ANY THIRD PARTY; OR (f) ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED OR SHARED THROUGH THE SITES OR SERVICES.

YOU UNDERSTAND AND AGREE THAT ANY MATERIAL OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITES OR SERVICES IS DONE AT YOUR OWN RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE ARISING FROM DOING SO. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SITES OR SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THESE TERMS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR COMPANY AND ITS AFFILIATES WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF OUR COMPANY AND ITS AFFILIATES, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES (OR, IF WE CHOOSE, TO SUPPLYING YOU THE SERVICES AGAIN) DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. IN ALL CASES, OUR COMPANY AND ITS AFFILIATES WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the above limitations and disclaimers may not apply to you. To the extent we may not, as a matter of applicable law, disclaim any implied warranty or limit our liabilities, the scope and duration of such warranty and the extent of our liability will be the minimum permitted under such law.

You understand and agree that we have set our prices and entered into these Terms with you in reliance upon the limitations of liability set forth in these Terms, which allocate risk between us and form the basis of a bargain between the parties.

11. Indemnification

You agree to indemnify and hold harmless our company and its Affiliates from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to, any actual or alleged breach of these Terms by you or anyone using your account. If we assume the defense of such a matter, you will reasonably cooperate with us in such defense.

12. Arbitration Agreement & Waiver of Certain Rights

You and UrbanSim, Inc. agree that we will resolve any disputes between us through binding and final arbitration instead of through court proceedings. You and UrbanSim, Inc. hereby waive any right to a jury trial of any Claim (defined below). All controversies, claims, counterclaims, or other disputes arising between you and UrbanSim, Inc. relating to these Terms or the Offerings (each a "**Claim**") shall be submitted for binding arbitration in accordance with the Rules of the American Arbitration Association ("**AAA Rules**"). The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration or by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies.

If you demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, UrbanSim, Inc. will pay as much of the administrative costs and arbitrator's fees required for the arbitration as the arbitrator deems necessary to prevent the cost of the arbitration from being prohibitive. In the final award, the arbitrator may apportion the costs of arbitration and the compensation of the arbitrator among the parties in such amounts as the arbitrator deems appropriate.

This arbitration agreement does not preclude you or UrbanSim, Inc. from seeking action by federal, state, or local government agencies. You and UrbanSim, Inc. also have the right to bring qualifying claims in

small claims court. In addition, you and UrbanSim, Inc. retain the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms.

Neither you nor UrbanSim, Inc. may act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. Claims may not be arbitrated on a class or representative basis. The arbitrator can decide only your and/or UrbanSim, Inc.'s individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated.

If any provision of this Section is found to be invalid or unenforceable, then that specific provision shall be of no force and effect and shall be severed, but the remainder of this Section shall continue in full force and effect. No waiver of any provision of this Section of the Terms will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of this Terms. This Section of the Terms will survive the termination of your relationship with UrbanSim, Inc.

THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR URBANSIM, INC. WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

13. Other Provisions

Under no circumstances will we be held liable for any delay or failure in performance due in whole or in part to any acts of nature or other causes beyond our reasonable control.

These Terms will be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of laws rules or provisions.

You agree that any action of whatever nature arising from or relating to these Terms, the Sites, or Services will be filed only in the state or federal courts located in San Francisco, California. You consent and submit to the personal jurisdiction of such courts for the purposes of any such action.

If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and will not affect the enforceability of any other provisions.

The failure by us to enforce any right or provision of these Terms will not prevent us from enforcing such right or provision in the future.

We may assign our rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law.

14. Changes to these Terms

From time to time, we may change these Terms. If we change these Terms, we will give you notice by posting the revised Terms on the Sites. Those changes will go into effect on the Revision Date shown in the revised Terms. By continuing to use the Sites or Services, you are agreeing to the revised Terms.

PLEASE PRINT A COPY OF THESE TERMS FOR YOU RECORDS AND PLEASE CHECK THE SITES FREQUENTLY FOR ANY CHANGES TO THESE TERMS.