General terms and conditions

OPEN DATA POLICY

PREAMBLE

Through the PLATFORM available at https://www.OpenDataSoft.com, OpenDataSoft provides Software as a Service (“SaaS”) solutions that work with open data portals, internal data references, smart city platforms, and data marketplaces to provide:

- Processing and publication of datasets for systems management;
- Use and visualization of data for the Users; and
- Reuse of data via simple and powerful APIs for developers.

These General Terms and conditions apply to you, as a user of the DOMAIN available at https://data.jerseycitynj.gov published by City of Jersey City (hereinafter THE COMPANY). The purpose of this document is to provide you with information on your rights and obligations in relation to the use of the functionalities offered through the DOMAIN.

> **Important**
>
> ANY USE OF THE DOMAIN, FOR ANY PURPOSE, REQUIRES ACCEPTANCE BY THE USER WITHOUT RESERVATION OF THESE GENERAL TERMS AND CONDITIONS (GTCS).

ARTICLE 1. DEFINITIONS

The terms listed below, as used in these GTCs, have the following meanings:

- **BENEFICIARY**: means the end USER who has been granted a right of access to DATASETS published by the COMPANY.
- **DATASETS**: means data produced by THE COMPANY, published on the PLATFORM, and made available to all or some categories of USERS, depending on THE COMPANY’s subscription and the licenses the COMPANY has granted.
- **DOMAIN**: means the domain name of the type https://data.jerseycitynj.gov that THE COMPANY has registered in connection with its subscription, on which it can publish its DATASETS. Specific DOMAINS can also be registered subject to conditions (e.g., use of a HTTPS certificate to secure access to this domain using private key, and possible intermediate certificates).
- **OPENDATASOFT PLATFORM**: means the platform OPENDATASOFT publishes, including all its graphic, audio, visual, software and textual components. The OPENDATASOFT PLATFORM is the exclusive property of OPENDATASOFT. It is accessible at https://www.opendatasoft.com/fr/.

- **OPEN LICENSE**: means the type of LICENSE that applies to DATASETS published in the PUBLIC SPACE of the OPENDATASOFT PLATFORM or otherwise accessible by BENEFICIARIES, without restriction, unless THE COMPANY clearly and conspicuously discloses to BENEFICIARIES accessing the DATASET different license terms that apply. DATASETS published by THE COMPANY with an OPEN LICENSE confer upon BENEFICIARIES a royalty-free, non-exclusive, worldwide, perpetual right of access and use. The right of use includes: reproduction, reuse, publication, dissemination, adaptation, modification, extraction and exploitation of DATASETS.
- **PRIVATE LICENSE**: means the specific LICENSE applicable to DATASETS published by THE COMPANY through its DOMAIN, the terms of which are specified by THE COMPANY and published to BENEFICIARIES.
- **PUBLIC SPACE**: means the areas of the OPENDATASOFT PLATFORM that are freely accessible to all categories of USERS.
- **USER**: means all kinds of users, either a BENEFICIARY or a THE COMPANY.

ARTICLE 2. PURPOSE OF GTCs – CONTRACTUAL DOCUMENTS

These GTCs, entered into between THE COMPANY, on the one hand, and the BENEFICIARY, on the other hand, (hereinafter collectively referred to as the “PARTIES”) define the respective rights and obligations of each PARTY in connection with the use of all the functions offered by the DOMAIN. These GTCs form the common base of the contractual relationships and are supplemented by the OPEN and PRIVATE LICENSES offered for each DATASET.

ARTICLE 3. CONDITIONS OF ACCESS & REGISTRATION

(i) Acceptable Use Policy (“AUP”)

Each BENEFICIARY shall:

- act fairly and with diligence towards THE COMPANY, OPENDATASOFT and third parties;
- provide only truthful information to THE COMPANY and, if applicable, to other USERS;
- use the OPENDATASOFT PLATFORM and the DOMAIN for the purposes described in these GTCs;
- not use the OPENDATASOFT PLATFORM and/or the DOMAIN to commit crimes, offenses, or infractions or otherwise violate applicable law;
- not use the OPENDATASOFT PLATFORM and/or the DOMAIN to direct USERS toward another site or a competing service;
- respect the private life of third parties and the confidentiality of exchanges; and
- not seek to affect the data processing system implemented to operate the OPENDATASOFT PLATFORM and the DOMAIN.

In addition to the foregoing, the BENEFICIAIRY shall not disseminate messages or information that:

- criticize THE COMPANY or OPENDATASOFT;
- are at variance with public order and good morals;
- are slanderous, defamatory, racist, xenophobic, involve Holocaust denial, or pose an assault on the honor or reputation of others;
- incite discrimination, hatred of a person or a group of persons because of their origin or sexual orientation, or their belonging or not belonging to a particular ethnic group, nation, race, or religion;
- threaten a person or group of persons;
- are of a pedophile nature;
- incite people to commit a crime or act of terrorism, or justify war crimes or crimes against humanity;
- incite people to commit suicide;
- enable copyright infringement or unauthorized access to software serial numbers, intrusion to computer and telecommunications systems, dissemination of viruses and other malware, and any software facilitating the invasion or infringement of others' rights or the safety of persons or property; or
- promote the sale of, or investment in, property, goods, or services (e.g., prospectuses, soliciting, prostitution).

(ii) General Obligations of BENEFICIARIES

In the context of using the DOMAIN, BENEFICIARIES undertakes not to violate public order and to comply with the existing laws and regulations, respect the rights of third parties and the provisions of this GTCs.

On DATASETS, BENEFICIARIES shall:

- strictly comply with the terms of the OPEN or PRIVATE LICENSE, or the license corresponding to the DATASET that is accessed via THE COMPANY DOMAIN. Each BENEFICIARY must review the applicable LICENSE for each DATASET before downloading or extracting any data; and
- always accurately attribute the source(s) of DATASETS when reusing all or any part thereof.

(iii) General obligations of THE COMPANY

In the context of provision of its DOMAIN, THE COMPANY shall:

- strictly comply with all applicable laws and regulations;
- not infringe the rights of third parties, and particularly the intellectual property rights of third parties, at the time of the establishment, dissemination, or manipulation of DATASETS created through the account opened on the OPENDATASOFT PLATFORM.

THE COMPANY is solely and exclusively liable for its use of the OPENDATASOFT PLATFORM. By way of example and not limitation, THE COMPANY is solely liable for the DATASETS published on the OPENDATASOFT PLATFORM and for its relationships with the BENEFICIARIES, OPENDATASOFT being merely in this context a technical intermediary.

ARTICLE 4. DISCLAIMERS AND LIMITATIONS OF LIABILITY

(i) General principles

The BENEFICIARY is solely and exclusively liable for its use of the DATASETS, and more generally of any content published on the DOMAIN. THE COMPANY shall not be liable for any damage caused by the use of all or part of the DATASETS or content published on the DOMAIN.

OPENDATASOFT shall have no liability for any third-party site, including those accessible by hyperlink text, or DOMAIN created by THE COMPANY, which USERS may access via the OPENDATASOFT PLATFORM.

THE COMPANY shall have no liability for: - abnormal use or illicit operation of the DOMAIN; - use of the DOMAIN in violation of these GTCs; - any interruption or unavailability of the DOMAIN because of technical maintenance operations or disruption caused by web-based network outside THE COMPANY’s control; - incomplete, out-of-date, erroneous, or misleading DATASETS; - lack of compatibility of the DOMAIN with BENEFICIARY’s hardware or software, for which the BENEFICIARY is solely responsible.

THE COMPANY is only obligated to use commercially reasonable efforts to perform its obligations hereunder; it does not warrant, represent, or guarantee full, complete, or perfect performance.

The BENEFICIARY will be able to engage THE COMPANY’s liability once he will have notified the alleged failure through a registered letter with acknowledgment of receipt and if THE COMPANY does not answer within thirty (30) days of the date of receipt. Either way, THE COMPANY shall only be liable in case of proven fault.

THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE R COURSE OF DEALING. ALL SERVICES ARE PROVIDED "AS IS.”

Furthermore, by the very nature of the Internet (interconnection of a multitude of independent users interacting with each other), no one can guarantee the overall functioning of networks from start to finish. THE COMPANY will under no circumstances be held liable for any loss it is not the direct cause.

Regardless of the legal action nature, THE COMPANY will under no circumstances be held liable for an indirect damage of any kind, including without limitation, damages for lost profits, advantage, savings or revenues, third party loss, or action intended against the BENEFICIAIRY and its consequences, related to these GTCs or its enforcement. The BENEFICIARY is solely responsible for any loss, direct or indirect, material or immaterial, it or any of its employees causes to THE COMPANY, to OPENDATASOFT or to third parties in connection with BENEFICIARY’S use of the OPENDATASOFT PLATFORM, the DOMAIN ant its functionalities.

It is expressly agreed between the PARTIES that the stipulations of this clause shall continue to apply even in the case of expiration or termination of this agreement.

(ii) ISP Status ; DMCA

OPENDATASOFT undertakes to remove promptly any content that is manifestly illicit as soon as it shall have knowledge thereof. OPENDATASOFT may remove or disable access to any content without prior notice in connection with illegal content, where the content may disrupt or threaten the SERVICES, pursuant to the Digital Millennium Copyright Act (“DMCA”) or as required to comply with law or any judicial, regulatory, or other governmental order or request. DMCA takedown notices may be directed to contact@opendatasoft.com.

USERS acknowledge that OPENDATASOFT does not guarantee the validity, accuracy, or completeness of the DATASETS or other content disseminated by THE COMPANY via their DOMAIN or via the PUBLIC SPACE.

THE COMPANY is solely liable for the DATASETS, content, and services they offer BENEFICIARIES via the OPENDATASOFT PLATFORM.

ARTICLE 5. COMPLIANCE WITH LAW; INDEMNIFICATION

Without limiting the foregoing, each PARTY shall (i) comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control; and (ii) be responsible for properly handling and processing notices sent to it (or any of its affiliates) by any person claiming that DATABASES or other content violate such person’s rights, including notices pursuant to the DMCA.

BENEFICIARY will defend, indemnify, and hold harmless THE COMPANY, its affiliates and licensors, 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) BENEFICIARY’S use of the DOMAIN (including any activities BENEFICIARY’S ACCOUNT and use by BENEFICIARY’s employees and personnel); (b) BENEFICIARY’S breach of this CONTRACT or failure to comply with applicable law; (c) Any content or the combination thereof with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by BENEFICIARY or other content, or by the use, development, design, production, advertising or marketing thereof; or (d) a dispute between BENEFICARY and any or other USER.

THE COMPANY may disclose any content or information to government agencies as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, THE COMPANY will give BENEFICIARY notice of any such legal requirement or order.

ARTICLE 6. INTELLECTUAL PROPERTY; PUBLICITY

The BENEFICIAIRY acknowledges that:

- the OPENDATASOFT PLATFORM and all its components are the exclusive property of OPENDATASOFT, and
- that data published on the DOMAIN are THE COMPANY's property.

Except for data published on the DOMAIN, the brands, logos, slogans, graphic elements, photographs, animations, videos, software, databases, and texts created, published, or recorded by OPENDATASOFT are the exclusive property of OPENDATASOFT, and cannot be reproduced, used or represented without express prior written authorization of OPENDATASOFT, under penalty of legal prosecution.

Any total or partial representation of the OPENDATASOFT PLATFORM, of the DOMAIN or its components, by any means whatsoever, without the express prior authorization of OPENDATASOFT or, as the case may be, of THE COMPANY, with respect to DATASETS disseminated by their actions, is strictly prohibited, and shall constitute copyright infringement.

Moreover, THE COMPANY expressly prohibits the following:

- extraction by permanent or temporary transfer of all or a qualitatively or quantitatively substantial part of the content of the DOMAIN, by any means and in any way whatsoever, unless the party committing this extraction is acting in accordance with the terms of a valid LICENSE granted by OPENDATASOFT or THE COMPANY;
- the reuse, through making available to the public of all or a qualitatively or quantitatively substantial part of the DOMAIN, in any way whatsoever, unless the party committing this reuse is acting in accordance with the terms of a valid LICENSE granted by OPENDATASOFT or THE COMANY.

ARTICLE 7. PROTECTION OF PERSONAL DATA

In using the OPENDATASOFT PLATFORM, the PARTIES shall comply with all applicable laws and regulations (including without limitation those regarding the protection of personal and other information), respect the rights of third parties, and comply with these General Terms and Conditions. Without limiting the foregoing, each PARTY shall be solely responsible for compliance with any of the following, to the extent they apply to the PARTY's operations or to information possessed or made accessible by the PARTY: the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), payment card industry ("PCI") data security standards, security standards for financial data developed pursuant to the Sarbanes-Oxley Act of 2002 ("SOX") and for personal financial information pursuant to the Gramm-Leach-Bliley Act, Federal Trade Commission ("FTC") requirements regarding the safeguarding of personal information, and the requirements of the Children's Online Privacy Protection Act ("COPPA").

The BENEFICIARY should review the Privacy Policy accessible at XXX to complete XXX published by THE COMPANY on the DOMAIN.

ARTICLE 8. FORCE MAJEURE

Any failure to perform or partial performance by THE COMPANY shall be excused to the extent that it arises in connection with a case of force majeure (i.e., matters beyond THE COMPANY'S reasonable control), including without limitation hacking, unavailability of materials, supplies, hardware, peripherals, personal or other equipment; interruption, suspension, reduction, or disruptions of electricity or other inputs, or any interruptions of electronic communications networks.

ARTICLE 9. GENERAL PROVISIONS

The COMPANY reserves the right to update and amend these GTCs at any time. BENEFICIARIES accessing the DOMAIN shall be bound by the version of the GTCs in effect at the time of such access.

No instruction or document not expressly contained in these GTCs shall have any applicability or effect, unless contained in a separate written agreement between the PARTIES.

This agreement between the PARTIES does not create any agency or employment relationship. The relationship between the PARTIES is that of independent contractors, vendor and customer.

The fact that one of the PARTIES may not have enforced one of the clauses of these GTCs shall not be construed as a waiver of said clause.

In the event of any difficulty of interpretation among any of the titles appearing in the article headings, and any one of the articles themselves, the titles will be deemed non-existent.

If any provisions of these GTCs is found to be unenforceable by a court of competent jurisdiction, it will be deemed inapplicable, but this will not in any way affect the validity of the other clauses, which shall remain fully applicable.

ARTICLE 10. APPLICABLE LAW; ARBITRATION

These GTCs are governed by the laws of the State of New York without regard to choice of law provisions. Any court proceeding with regard to this CONTRACT shall be brought only in local or federal court in Washington, DC. The parties waive any objections thereto with regard to jurisdiction, venue, or forum non conveniens and agree to waive, to the fullest extent allowed by law, any trial by jury.

In the event of disputes arising between the PARTIES regarding the interpretation, execution, or termination of these GTCs, the PARTIES shall strive to reach an amicable settlement through informal negotiations, failing which either PARTY may submit the dispute to arbitration with the other PARTY's consent, or, absent such consent, seek any and all remedies available to it at law or equity.

Should THE COMPANY and the BENEFICIARY agree to arbitrate any disputes arising out of or relating to this Agreement, the provisions of this paragraph shall apply. The arbitration of any CONTRACT dispute shall be conducted in accordance with the rules of the American Arbitration Association (“AAA”) as modified by this CONTRACT. The arbitration shall be adjudicated by one (1) arbitrator mutually designated by the parties or appointed by the AAA if the parties fail to so designate an arbitrator. THE COMPANY and the BENEFICIARY acknowledge that this CONTRACT evidences a transaction in interstate commerce and that the United States Arbitration Act and Federal Arbitration Law shall govern the interpretation and enforcement of, and proceedings pursuant to this or a prior agreement. Unless THE COMPANY and the BENEFICIARY agree otherwise, the location of any arbitration shall be in Washington, DC. THE COMPANY and the BENEFICIARY agree that no arbitrator has the authority to: (i) award relief in excess of what this CONTRACT provides; or (ii) award punitive or exemplary damages. The arbitrator must give effect to the provisions of this CONTRACT and the laws of the State of New York without regard to choice of law provisions. Each party acknowledges that arbitration is final and binding and subject to only very limited review by a court. In such case, a judge shall decide the subject dispute or claim.