

Powell, Curtis & Associates, LLC
Terms of Use

Date of last revision: July 3, 2018

This terms of use agreement (“Agreement”) is between Powell, Curtis & Associates, LLC , a Delaware limited liability company (“Company” or “we”) and the person or entity (“User” or “you”) that has decided to use: our services; any website or app associated with us; or, any features, products, graphics, text, images, photos, audio, video, location data, computer code, and all other forms of data and communications of ours (collectively, “Services”).

BY USING THE SERVICES IN ANY WAY, YOU AGREE TO BE BOUND BY THIS AGREEMENT. If you do not accept and agree to be bound by all of the terms of this Agreement, including the Privacy Policy, posted at <https://www.drain-marker.com/privacy-policy.pdf> and incorporated by reference herein, do not use the Services.

The terms of this Agreement are subject to change by the Company at any time. It is the responsibility of User to check this Agreement periodically for any changes. Continued use of the Services shall constitute acceptance of the new terms of use Agreement.

I. Your Use of the Services

A. Nature of Services

We created and operate DrainMarker, an app that helps communities map stormwater drains and track which drains are marked as those that flow directly to local waterways.

B. User Representations and Eligibility to Use Services

By registering and using the Services, each User represents and warrants User: (i) has the authority and capacity to enter this Agreement; (ii) is 18 years or older, or 13 years or older and using the Services with the express permission of a parent or guardian; (iii) has express permission from an entity or individual authorized to use our Services to use the Services under that entity’s or individual’s contract with us; (iv) is not precluded or restricted in anyway by any laws from using the Services; (v) is not otherwise precluded or ineligible to use the Services and has not been previously suspended from using the Services under any name or entity; and, (vi) is not using the Services for any purpose other than assisting and collecting data for the entity or group under which User is accessing and using our Services.

C. Truthfulness of Information

You represent and warrant that all information you submit when using the Services is complete, accurate, and truthful. User is responsible for maintaining the completeness, accuracy, and truthfulness of such information.

D. Limited Use of Services

The Services are only for the uses specified in this Agreement. Users may not use the Services contained in the Services in connection with any commercial endeavors outside of the Services and this Agreement. Users may not disseminate any information

collected under the Services outside of the Services or to any third party; information acquired for and submitted to the Services are for the sole benefit and use of the entity or group under which User accessed our Services and for any uses by us set forth in this Agreement. The Company reserves the right to investigate and take legal action in response to illegal and/or unauthorized uses of the Services, including illegal use of the Services and unauthorized access of or linking to the Services.

E. No Infringement: Company

You agree that the Company's Services contain proprietary information and material that is owned by the Company and is protected by applicable intellectual property and other laws, including but not limited to trademark, copyright, patent, and trade secret laws. The Company's ownership extends to all content, features, and functionality on the website or app, and in Company communication that is protected or protectable under the law. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Services in compliance with this Agreement. No portion of the Services may be reproduced in any form or by any means, except as expressly permitted in this Agreement or otherwise in writing by an authorized agent of the Company. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Services in any manner, and you shall not exploit the Services in any unauthorized way. In no way should your use of the Services be construed to diminish the Company's intellectual property rights or be construed as to provide User a license or the ability to use the Services in any context other than as expressly permitted under this Agreement.

F. User-Generated Content

Providing content to the Services—including posting photographs, providing notes or other content, or other creations through use of the Services—does not afford User any right or ownership in that content. The entity or group authorizing User to use our Services and our Company by the terms here and in any agreement between those two parties, retains all rights to any content User generates or provides. User assigns all content generated with the App to the authorizing entity or group. To the extent any User content cannot be transferred entirely to the above entities, User agrees not to use that content and: (1) the entity or group authorizing User to use our Services retains a perpetual, irrevocable, transferrable, worldwide, fully-paid right and license to use any User-generated content, including for public, advertising, and promotional use; and, (b) the Company retains a perpetual, irrevocable, transferrable, worldwide, fully-paid right and license to use any User-generated content, including for public, advertising, and promotional use, *provided that* the Company will not publicly post or distribute specific information on storm drain data, other than aggregate statistics (e.g. the number of drains in an area or nationally) and photographs.

G. Prohibited Activities

Users shall not engage in the following activities:

1. Use the Services for any unlawful activities or in violation of any laws, regulations, or contractual provisions, or to induce others to do or engage in the same;
2. Use the Services to promote violence, degradation, subjugation, discrimination or

- hatred against individuals or groups based on race, ethnic origin, religion, disability, gender, age, veteran status, sexual orientation, or gender identity;
3. Post any content on the app that includes nudity, sexual content, or vulgarity;
 4. Use the Services, or information provided in the Services, for any purpose other than participation in collection of information for the entity or group under which User accesses the Services;
 5. Access a User's account without permission of User or Company;
 6. Publish or allow to be published malicious code intended to damage any mobile device, browser, computer, server, or network hardware;
 7. Spam any comments section with offers of goods and services, or inappropriate messages;
 8. Use manual or automated software, devices, or other processes to "crawl," "scrape," or "spider" any portion of the Services;
 9. Decompile, reverse engineer, or otherwise attempt to obtain the source code of the Services; and,
 10. Solicit passwords or personal identifying information for commercial or unlawful purposes from other Users or disseminate another person's personal information without his or her permission.

II. Disclaimers, Waivers, and Indemnification

A. No Liability for Safety of Person or Property

Our app provides the ability to navigate to specific areas for the purpose of marking stormwater drains. We do not investigate any areas or hazards that may exist as part of or surrounding a stormwater drain. Users are solely responsible for their own safety, as well as the safety of their property, and should use caution when travelling and marking stormwater drains. Our app should not be used while driving or walking, as such use could cause a distraction from those tasks. Any warnings or notices we provide through the app are intended as helpful reminders and should not replace any laws, regulations, the use of caution, or observations of one's surroundings.

B. Disclaimer of Warranties

All information and services are provided on an "as is" basis without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. In addition, the Company makes no warranty that access to the Services will be uninterrupted, secure, complete, error free, or meet a User's particular requirements; or that it will be or continue to be compatible with any other service or program.

C. Updates and Versions

The Company may issue updates to the Services. User understands that these updates may be automatically installed or implemented; that User here consents to such updates and installations without further notice; and should User refrain from utilizing updates, the Services may not operate properly. Furthermore, User has no right or entitlement to any version of the Services.

D. Waiver of Liability

User waives any liability of or claims against the Company for any injuries or damages

(including compensatory, punitive, special, or consequential damages) User sustains as a result of or associated with using the Services. User waives any claim or liability stemming from the negligence of the Company. User also waives any liability of the Company based upon the negligence, recklessness, intentional acts, or accidental conduct of Users or any third party. User understands that the Company does not control or investigate its Users or third parties.

E. Scope of Waiver

User understands and agrees the above waiver extends to any claim of any nature or kind, known or unknown, suspected or unsuspected, regardless of when the claim first existed. This includes waiver of a claim of the type identified under California Civil Code, Section 1542, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

F. Indemnification

If the Company is subject to a complaint, demand, mediation, arbitration, litigation, or other pursuit based upon User’s conduct relating to or from use of the Services, User agrees to indemnify the Company for all costs, expenses, and fees (including attorneys’ fees by the attorneys of the Company’s choice) it expends in defending itself against or otherwise addressing such pursuit. Such conduct or use includes, but is not limited to, User’s violation of this Agreement; User’s use of the Services; User’s interactions with other Users or others; User’s use of intellectual property on or through the Services; and any such actions performed by an agent, entity, or representative on User’s behalf. User agrees to indemnify the Company as soon as the Company incurs the costs, expenses, and fees, whether those are billed by event, or in week, month, or some other interval.

G. Limitation of Damages

Any recovery against us is limited to direct damages up to and including \$50 USD. You waive your right to collect any other damages, including consequential, lost profits, special, indirect, or incidental damages.

III. Limitation of Services and Termination

A. Right to Remove Content

The Company reserves an unrestricted right to remove content, including that of Users, at any time without advanced notice.

B. Right and Grounds to Terminate User Access

To protect the Company and its Users, the Company reserves an unrestricted right to refuse, terminate, block, or cancel a User’s application to, account with, or access to the Services at any time, with or without cause. User acknowledges here that User has no right: to use of the Services should the Company terminate or suspend User’s account. Primary reasons warranting termination include (and primary reasons leading to suspension pending investigation of claims or evidence of the following):

1. User violating any of the provisions of this Agreement;
2. User hindering or interfering with the Company in providing its Services;

3. User making misrepresentations, lying, or deceiving the Company or other Users; and,
4. User using the Services or Content in violation of any international, federal, state, or local law, or applicable regulation, rule, or order by any regulatory, governing, or private authority, or a court of competent jurisdiction.

C. No Right to Services

User neither possesses nor retains any ownership of or rights to the Services or any content generated by the Company or User. Upon termination, User has no right to access or have returned any such information.

D. Survival

After termination, the Company retains all rights to content, waiver, and indemnification as specified in this Agreement, and any rights or restrictions survive termination.

IV. General Provisions

A. DMCA Violations

If you believe any content on any Site of the Company infringes on your copyright, you may request removal of the content by contacting the following address at support@drain-marker.com. The Company will respond to all requests as quickly as possible and to the best of its ability.

B. Successors and Assignees

The Company may assign this Agreement to an affiliate or in connection with a merger or sale of all or substantially all of the Company's ownership or assets. Users may not assign this Agreement without express written permission from the Company.

User agrees that any waiver or protections afforded to the Company are also provided to its affiliates, directors, officers, principals, employees, agents, and successors in their roles and relationship with the Company. User also acknowledges that all waivers and agreements bind not only User, but any successors, heirs, agents, and other representatives.

C. Arbitration

The exclusive means of resolving any dispute or claim arising out of or relating to this Agreement (including any alleged breach thereof) or the Service shall be binding arbitration administered by the American Arbitration Association. Users may not under any circumstances commence or maintain against the Company any class action, class arbitration, or other representative action or proceeding. Parties understand and accept that, by agreeing to arbitration, the Parties are foregoing their access to a trial by jury.

D. Governing Law and Venue

This Agreement will be governed by and construed in accordance with the laws of the State of Colorado. The venue for any disputes including mediation, arbitration, or litigation shall be in Colorado. Each Party agrees to waive the following defenses to any action brought in Colorado: *forum non conveniens* and lack of personal jurisdiction.

E. Waiver

If one Party waives any term or provision of this Agreement at any time, that waiver will only be effective for the specific instance and specific purpose for which the waiver was given. If either Party fails to exercise or delays exercising any of its rights or remedies under this Agreement, that Party retains the right to enforce that term or provision at a later time.

F. Severability

If any provision of this Agreement is invalid or unenforceable, whether by the decision of an arbitrator or court, by passage of a new law, or otherwise, the remainder of this Agreement will remain in effect and be construed and enforced consistent with the purpose of this Agreement, to the fullest extent permitted by law. Furthermore, if a provision is deemed invalid or unenforceable, the Parties agree that provision should be enforced to the fullest extent permitted under the law, consistent with its purpose.

G. Understanding of Agreement

You acknowledge that you understand the terms and conditions of this Agreement. You also acknowledge that you could discuss these provisions with a lawyer at your own expense prior to entering into this Agreement, and have either done so or chosen not to do so in entering this Agreement. Regardless of your choice, you intend to be fully bound by this Agreement.

H. Entire Agreement

This Agreement, together with the Privacy Policy, constitutes the entire agreement between the Company and you, and supersedes all prior agreements, representations, and understandings, oral or written, between the Parties.