

#### Welcome to OPEN-NY!

This website creates unprecedented transparency across all levels of government and gives the people user-friendly access to incalculable amounts of information about New York. We invite you to connect with government by freely using the information tools we provide here. We ask only that you abide by our **Terms of Use**, to protect against abuses of this website and its datasets. Then use our government information however you wish, in private sector projects or in government collaborations, to generate useful apps or to evaluate our performance.

At their core, the OPEN-NY Terms of Service are among the least restrictive of any terms of service in furtherance of promoting the sharing, utilization, and reuse of Open Data. The OPEN NY Terms of Service do not contain restrictions requiring members of the public to use attribution, to re-post the license terms with any re-uses of the data, to impose share-alike or technical restrictions, nor require the public to obtain pre-approval before re-use of the data. We created these OPEN-NY-specific terms because we found that other commonly cited standardized terms are far more restrictive.

OPEN-NY guards against one basic misuse of New York State's datasets -- doing something illegal with them (such as creating an app that purposely gives falsely dangerous driving directions). Keep your reuses lawful. So long as you are not doing anything malicious with NYS data, you may use it as you wish, subject to no other requirements.



# OPEN-NY Terms of Use

LAST MODIFIED: March 8, 2013

### Contract

As a public service, the State of New York ("The State") publishes data, datasets, information, content, files, documents, material (collectively, "Content") on OPEN-NY. You are welcome to freely download and use this Content as long as you abide by these Terms of Use ("Terms of Use," or "Terms"), which constitute a contract between you and the State. Using Content from OPEN-NY constitutes your agreement and acceptance of these terms. Other terms may apply generally to the OPEN-NY website, such as its Privacy Policy, or may be imposed specifically on specific Content. You are responsible for reading and abiding by these terms as well. These Terms of Use affect your legal rights and obligations. If you do not agree to be bound by all of these Terms of Use, do not access or use OPEN-NY.

These Terms supersede any previous written or oral agreements concerning the Content on OPEN-NY. The Terms shall be governed by and interpreted under the laws of the State of New York without regard to conflict of laws provisions. Disputes arising out of these Terms of Use are subject to the exclusive venue of, and the exclusive jurisdiction of, state and federal courts located in Albany County, New York.

### **Lawful Purposes**

As a condition of your use of Content published on OPEN-NY, you warrant to the State that you will not use this website or its Content for purposes that are unlawful or prohibited by these Terms of Use. You agree to comply with all laws, rules and regulations (for example, federal, state, local and provincial) applicable to your use of OPEN-NY, including but not limited to, intellectual property laws. You may not use the Content here to commit a criminal or civil offense or encourage others to do so.

The State may require you, by providing you with a notice in writing with which you shall comply, to cease using or displaying its Content if the State reasonably believes you are violating these Terms of Use, violating other terms posted on OPEN-NY and applicable to the website's Content, or that you are failing to abide by international, federal, state, or local laws, regulations, or ordinances.

#### Security of this Website

This website is administered by the NYS Office of Information Technology Services (ITS). Actual or attempted unauthorized use of this website may result in criminal and/or civil prosecution. Use of this website may be monitored and disclosed by and to authorized personnel for official purposes without additional prior notice to users. The State has taken reasonable measures to safeguard the integrity of the website, but is not liable to you for any injury caused by security breaches or other acts compromising the website. The State of New York is not responsible for any losses resulting from events unanticipated by the State or outside of the State's control, including acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes, failure of electronic or mechanical

equipment, failure of communication lines and interconnectivity, computer viruses, unauthorized access or theft.

You may not use OPEN-NY to upload computer viruses or other computer code or malware that damages or disrupts the State's equipment or communications networks, alters or interrupts OPEN-NY's Content or functionality or causes harm to the website or to any other user of the website.

## **Privacy of this Website's Content**

The terms of the OPEN\_NY website's Privacy Policy are incorporated into and made a part of these Terms of Use. Content published on OPEN-NY has been vetted by the government agencies supplying the Content in order to reasonably ensure that information protected from disclosure by law is not released therein. You must contact the supplying government agency if you have any questions or concerns about the privacy of particular Content or contact ITS Counsel's Office at (518) 473-5115 or opendata@its.ny.gov..

### **Public Participation**

To the extent OPEN-NY activates a module or forum for public comment or the uploading of Content or other information from members of the general public, the following provisions concerning acceptable use apply, and uploading such information indicates your agreement to abide by the following:

- You shall use this website and any applications hereon only for public participation purposes
  directly related to the purposes of the website, and not for any fraudulent, illegal, or nonpublic
  purpose, including, but not limited to, the transmission of obscene or harassing materials, the pursuit
  of personal activities, the mass distribution of unsolicited messages ("spamming"), or the promotion
  of commercial ventures or religious or political causes.
- To the extent this website requires log-in, you are responsible for acquiring and safeguarding your own user ID and password used to access the website, and shall be responsible for any activity attributable to the use of your account whether by you or any other person.
- You are solely responsible for your interaction with other users of OPEN-NY, whether online or
  offline. You agree that the State is not responsible or liable for the conduct of any user. The State
  reserves the right, but has no obligation, to monitor or become involved in disputes between you
  and other users. Exercise common sense and your best judgment when interacting with others,
  including when you submit or post Content or any personal or other information.
- You shall not engage in activities that may cause interference with or disruption to any network, information service, equipment or user thereof.
- You must not create accounts with OPEN-NY or access the site through unauthorized means, including but not limited to, by using an automated device, script, bot, spider, crawler or scraper.
- You shall comply with the website's confidentiality and security requirements and shall not seek
  information on other users or attempt to obtain access to, copy, or modify other users' files without
  express permission.
- You shall not violate the rights of any person or entity protected by copyright, trademark, trade dress, trade secret, patent, or other similar laws or regulations.

You must report any abuse or misuse of OPEN-NY's public participation application to the NYS
Office of Information Technology Services, Counsel's Office at (518) 473-5115 or
opendata@its.ny.gov, and you shall cooperate fully in any investigation into any such abuse or
misuse.

We welcome your feedback concerning OPEN-NY, but offer no guarantee your feedback will result in changes to the website.

#### Intellectual Property

These Terms of Use were created to protect against abuses of the OPEN-NY website. We invite you to access, read, discuss, share, and use the Content found on OPEN-NY to connect with government and evaluate our performance.

- The State grants you a non-exclusive, revocable license to use the Content contained on this website in a manner consistent with the Terms of Use.
- Access to OPEN-NY does not give you ownership or a license to any intellectual property rights in OPEN-NY or any Content you access.
- Within the Content on OPEN-NY, there may be graphical images, photographs, videos, logos, service marks, trademarks, software, or other materials protected by copyright, trademark, trade dress, patent, trade secret and other similar laws and regulations. Uses of these protected materials are not licensed to you without the prior written permission of the government agency or third party to whom such graphical images, logos, photographs, videos, logos, service marks, trademarks, software, or other materials pertain. It is your responsibility to procure this permission.
- You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary
  rights notices incorporated in or accompanying any Content on OPEN-NY, and you will not
  reproduce, modify, adapt, prepare derivative works based on, perform, display, publish,
  distribute, transmit, broadcast, sell, license or otherwise exploit OPEN-NY Content in a manner
  inconsistent with the Terms of Use.
- Similarly, the State Seal and all page headers, custom graphics, button icons and scripts are service marks, trademarks and/or trade dress of the State, and may not be copied, imitated or used, in whole or in part, without prior written permission from the State.
- Other than as described in these Terms of Use, use of OPEN-NY does not grant you title or rights to any intellectual property the State may own in relation to the content published or displayed on this website. You may not upload to or post any materials on OPEN-NY for which you lack rights to do so under applicable laws or contractual agreements. If you believe such materials of yours have been posted on OPEN-NY in a manner which violates your intellectual property rights or other legal interests, you are required to contact the NYS Office of Information Technology Services, Counsel's Office at (518) 473-5115 or opendata@its.ny.gov with your concerns.

#### Links

OPEN-NY may contain links to other websites operated at the direction of their respective owners and under their own terms of use. There may also be links to third-party websites or features within images or comments on OPEN-NY. Some third-party websites require you to create and login to your account on the

third-party service, and you do so at your own risk. The State does not control any of these third-party web services or any of the material on their sites. Moreover, such links on OPEN-NY do not imply approval by the State of the listed destinations, warrant the accuracy of any information in those destinations, constitute endorsement of the entities to whose websites the links are made, or endorse any of the opinions expressed on any of these other websites. If you have a question or comment about any of these other websites, please contact the websites directly. You expressly acknowledge and agree that the State is in no way responsible or liable for any third-party services or features.

### Content Quality, Disclaimer of Warranties, and Limitation of Liability:

OPEN-NY strives to provide Content that is accurate and current, but you understand and agree that your use the Content on this website is at your own risk. Human or mechanical error, disruptions in service, or failure of communications networks, mechanical or electronic equipment could cause inaccurate information to be posted on OPEN-NY. As such, the State does not assume legal liability or responsibility for the accuracy, timeliness, completeness, or quality of the Content provided on OPEN-NY and makes no warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, nor represents that use of the Content would not infringe privately owned rights. The State also does not vouch for the continued accuracy or currency of Content after it has been downloaded from OPEN-NY, nor the quality or accuracy of any analyses or re-uses of that Content.

Government agencies supplying Content to OPEN-NY are the authoritative sources of OPEN-NY's Content, and are responsible for determining that the Content meets the respective agency's information quality standards. These government agencies are also responsible for version control of their Content and retaining record copies of the Content in compliance with record retention requirements of the NYS Arts and Cultural Affairs Law.

The Content on OPEN-NY is not a substitute for specific advice from a professional.

The State will make reasonable efforts to correct errors on OPEN-NY that you bring to our attention. We welcome your recommendations for correcting or improving the website and its Content.

The State may provide metadata, data format, presentation or schemas representing the State's preferred citation and presentation for our Content. You recognize and accept that the State may change these items as OPEN-NY is updated or modified in the future.

The State reserves the right to modify, discontinue or remove any Content on OPEN-NY or terminate your access to OPEN-NY for any reason, without notice, at any time, and without liability to you. Upon termination, all licenses and other rights granted to you in these Terms of Use will immediately cease. We reserve the right to refuse access to OPEN-NY to anyone for any reason at any time.

Concerning the use (or inability to use) OPEN-NY, the State is not responsible for direct, indirect, incidental, special, exemplary, or consequential damages to you or any third party including, but not limited to, damages claimed for business interruption, the procurement or substitution of goods or services, loss of data or profits, loss of goodwill, or other intangible losses, however caused and under any theories of liability, whether asserted for breach of contract, tortious behavior, strict liability, negligence or under any other cause of action, even if the possibility of such damages was foreseeable or the State was advised of the possibility of such damages. This limitation is in addition to and not in lieu of any constitutional, statutory, or sovereign immunity defense that may be available to the State or its agents or employees.

#### Indemnity

By accessing or using OPEN-NY, you represent and warrant that your activities are lawful in every jurisdiction where you access or use OPEN-NY.

You agree to defend, indemnify and hold harmless the State, its officers, directors, employees and agents, and OPEN-NY's contributors, any entity jointly created by them, their respective affiliates and their respective directors, officers, employees, and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with your access to or use of the OPEN-NY website, in reference to any claim however caused and on any theory of legal liability, whether in contract, strict liability, or tort, including negligence.

#### **General Provisions**

Any rights not expressly granted herein are reserved. The State may modify these Terms of Use at any time and without notice other than posting its modifications on this webpage. Each time you use OPEN-NY you are required to review these Terms of Use for any changes since your last visit.

The State's performance of this agreement is subject to laws and legal requirements. Nothing in these Terms of Use limit the State's right and obligation to comply with statutory, law enforcement, or court requirements relating to this website or to the State's or your use hereof. The State and you agree that your use of this website and compliance with these Terms of Use does not create any kind of a partnership, joint venture, employment, or agency relationship between you and the State. Nothing on OPEN-NY or in these Terms of Use represents legal advice by the State to you. Communications between you and the State on OPEN-NY do not constitute legal or official notice to the State or any other government agencies, including any legal notice required by international, federal, state, or local laws, regulations, or ordinances. Such notice must instead be made by you through the official communication channels provided to you by those agencies.

Except as otherwise described in OPEN-NY's Privacy Policy, any materials posted by you on the site will be non-confidential, non-proprietary and subject to Freedom of Information Laws ("FOIL"). The State will not be liable for any use or disclosure of materials posted by you on the site or any materials submitted to the NYS Office of Information Technology Services by you that may be lawfully disclosed pursuant to FOIL.

If one or more of the provisions of these Terms of Use are for any reason declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, those provision(s) will not have any effect on the validity of the remainder of the Terms, which shall then be construed as if such unenforceable provision was never contained in the terms of Use.

Printed versions of the electronic versions of these Terms of Use are admissible in judicial or administrative proceedings to the same extent and subject to the same conditions as other business documents or records created or maintained by the State in printed form. The State's waiver of any right or remedy in these Terms of Use does not constitute a waiver of any other right hereunder or of the State's enforcement of any legal right or remedy for any subsequent breach or default.

We welcome you to OPEN-NY, and hope you find the information here useful. If you are dissatisfied in any manner with these Terms of Use, please let us know. But please be reminded that if we do not change the Terms to your satisfaction, your exclusive remedy is to discontinue use of this website.