

# TERMS OF SERVICE

Version: February 2017

## INTRODUCTION

These Terms of Service (“**Terms**”) are a legal agreement between you and Walkthrough, Inc. (“**Walkthrough**”, “**we**”, “**our**” or “**us**”). The Terms govern your access to and use of the Walkthrough websites through which we provide services to you, including www.walkthrough.com (the “**Site(s)**”), and the online and offline services that we provide you in connection with the Sites, including the real estate virtual tours that we create (the “**Services**”).

You represent and certify that you are of legal age to form a binding contract and are not a person barred from receiving Services under the laws of the United States or other applicable jurisdictions. To register as a user of the Services you must be 18 years or over. *If you are accessing the Sites on behalf or for the benefit of your real estate agency or company or a third party, you represent and warrant that you have sufficient authority to bind such other party to these Terms, in which case all references to “you” in these Terms shall be deemed references to such other party.*

BY CLICKING “I ACCEPT” OR OTHERWISE ACCESSING THE SITE OR USING ANY OF THE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO ANY OF THESE TERMS, WALKTHROUGH IS UNWILLING TO PROVIDE SERVICES TO YOU, AND YOU MUST DISCONTINUE THE REGISTRATION PROCESS.

## 1. SERVICES

**1.1. Real Estate Virtual Tours.** Walkthrough creates three-dimensional (3D) virtual tours and high-dynamic range (HDR) imaging of houses and other real estate on the market for sale or lease in Walkthrough’s service areas for real estate marketing purposes. Such videos, photos and related Walkthrough-generated content (collectively, the “**Virtual Tour**”) is compiled and made available to clients through a listing-specific Site. *If you order a Virtual Tour from Walkthrough, you certify to Walkthrough that (a) you have all right, title and authority (including permission from the subject property owner) necessary to allow Walkthrough and its designated personnel to create the Virtual Tour (including the right to enter upon the subject property and record the properties and (if any) persons on or about the subject property through any means) and distribute the Virtual Tour in the manner contemplated by these Terms.* Walkthrough retains all rights that it has in and to the Virtual Tour and grants you a limited, personal license and right to publish the Virtual Tour for marketing purposes while the subject property remains on the market for sale or lease. You are solely responsible for determining whether and how to publish the Virtual Tour, provided that such publishing must comply with these Terms and all applicable laws and regulations. You agree not to distribute or transfer the Virtual Tour to any party in a manner that is inconsistent with these Terms. By deciding to publish or otherwise use the Virtual Tour, you assume sole responsibility for the appropriateness, sufficiency and legality thereof. As a fundamental inducement to Walkthrough’s performance of such Services, to the fullest extent permitted by law, you hereby release and agree to indemnify Walkthrough and its related parties and personnel from and against any and all claims, actions, demands, liabilities, injuries, costs and damages arising out of or related to your breach of this Section 1.1.

**1.2. Site Availability.** The following provisions relate to the online features of the Services, such as the Sites through which you order and access the Virtual Tour. Walkthrough uses reasonable efforts to ensure that the online features of the Services are available 24 hours per day, seven days per week. However, there will be occasions when the Services will be interrupted for maintenance, upgrades and emergency repairs or due to failure of telecommunications links and equipment that are beyond the control of Walkthrough. Walkthrough will use reasonable commercial efforts to minimize such disruption where it is within the reasonable control of Walkthrough but will otherwise not be liable for such disruptions.

**1.3. Registration.** You may access certain online features of the Services, such as the Virtual Tour that you ordered, through your account (your “**Account**”). You may log into your Account using a unique

username and password. You are responsible for safeguarding your password and you agree not to disclose your password to any third party. You are solely responsible for any activities or actions taken under your username, whether or not you have authorized such activities or actions. You agree that the information that you provide to Walkthrough about yourself upon registration of your Account, and at all other times (“**Customer Data**”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the Customer Data to ensure that it remains true, accurate, current and complete. You may not impersonate any other person or use a username or password that you are not authorized to use. Walkthrough reserves the right to require you to change your password for any reason at any time. If you become aware of any unauthorized use of your Account, you agree to notify Walkthrough immediately at [Jeremy@GetAWalkthrough.com](mailto:Jeremy@GetAWalkthrough.com).

- 1.4. Site Ownership.** Walkthrough expressly retains all ownership rights, title and interest in and to all aspects of any software, the Services and the Sites, including all current and future patents, copyrights, trademarks, trade secrets, know-how, and other proprietary rights included or embodied in the Sites. You may not modify the Sites, create derivative works of the Sites, or reverse engineer, reverse compile, reverse assemble or do any other operation with the Sites that would reveal any source code, trade secrets, know-how or other proprietary information. This license shall not be construed or interpreted as granting or providing rights to you to use, reproduce, modify, distribute, perform, display, possess or control the source code or any other aspect of the Sites. You may not remove or modify any notice of confidentiality, trade secret, trademark or copyright encoded or embodied in the Sites or displayed by, on, or in the Sites. You may use the Sites only while these Terms remain in effect. Under no circumstances shall you have any rights of any kind in or to the Sites after any termination or expiration of your agreement to these Terms for any reason.
- 2. PRICING AND PAYMENT.** Pricing and payment are as per your order/registration page.
- 3. THIRD-PARTY SOFTWARE AND LINKING.** Although we may make software, hyperlinks and other products of third-party companies available to you, your use of such products is subject to the respective terms and conditions imposed by the third party owning, manufacturing or distributing such products, and the agreement for your use will be between you and such third party. Walkthrough makes no warranty with regard to the products or websites of any other entity. Walkthrough has no control over the content or availability of any third-party software or website. In particular, (a) Walkthrough makes no warranty that any third-party software you download or web site you visit will be free of any contaminating or destructive code, such as viruses, worms or Trojan horses and (b) it is your responsibility to become familiar with any web site's privacy and other policies and terms of service, and to contact that site's webmaster or site administrator with any concerns.
- 4. SUSPENSION AND TERMINATION.** While you are not responsible for paying for Services not performed (i.e., no Virtual Tour delivered) due to reasons within our control, Walkthrough reserves the right to suspend or terminate your access to and use of the Sites and Services, at any time, without notice, for any reason, including (a) your breach of these Terms, or any other policies or guidelines set forth by Walkthrough, or (b) conduct that Walkthrough believes is harmful to other users of the Sites or Services, or the business of Walkthrough or other third party information providers. Further, you agree that Walkthrough shall not be liable to you or any third party for any termination of your access to the Sites or Services, except with respect to refunds of payments for Virtual Tours not delivered. Walkthrough reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You agree that Walkthrough shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services, except with respect to refunds of payments for Virtual Tours not delivered.
- 5. PRIVACY.** Walkthrough respects the privacy of its users. Walkthrough collects, uses and discloses information about you in accordance with the Walkthrough Privacy Policy, which can be viewed at [www.getawalkthrough.com/privacy](http://www.getawalkthrough.com/privacy) or upon request for a copy (“**Privacy Policy**”). You understand and agree that, notwithstanding any measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions

and illegally gain access to confidential information. Accordingly, Walkthrough cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

- 6. DISCLAIMER OF WARRANTY.** THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITHOUT WARRANTIES OF ANY KIND. WALKTHROUGH EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SITES OR SERVICES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WALKTHROUGH MAKES NO WARRANTY THAT THE SITES OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, THAT THE SITES OR OUR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE SITES, INCLUDING THE SERVICES WILL BE AVAILABLE, OR THAT DATA ARE SECURE FROM UNAUTHORIZED ACCESS. WALKTHROUGH MAKES NO WARRANTY REGARDING ANY SOFTWARE, GOODS, SERVICES, PROMOTIONS, OR THE DELIVERY OF ANY GOODS OR SERVICES, PURCHASED, ACCESSED OR OBTAINED THROUGH THE SITES OR ADVERTISED THROUGH THE SITES. NO ADVICE OR INFORMATION GIVEN BY WALKTHROUGH, ITS EMPLOYEES OR AFFILIATES SHALL CREATE A WARRANTY.
- 7. SITE RULES OF CONDUCT.** You expressly agree that you are solely responsible for any and all acts and omissions that occur under your Account, and you agree not to engage in any unacceptable uses of the Services, which include use of the Services to: (a) register for the Sites and the Services if you have not acknowledged reading and agreed to abide by these Terms and the Privacy Policy; (b) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Sites or any other computer network; (c) use the Sites or the Services for any purpose other than marketing real estate for which you are authorized to market; (d) publicly post or transmit any personal, sensitive or financial information; (e) create user accounts by automated means or under fraudulent or false pretenses; (f) create or transmit unsolicited electronic communications such as spam to users or promote any products or services; (g) harass, threaten or intentionally embarrass or cause harm or distress to another person or group; (h) collect and publish any information about any of our users without their express written consent; (i) adapt, modify or reverse engineer any portion of the Services or the Sites; (j) use any spider, robot, retrieval application, or any other device to retrieve any portion of the Sites; (k) disseminate, store or transmit viruses, worms, Trojan horses or other malicious code or program; (l) encourage conduct that would constitute a criminal or civil offense; (m) violate any applicable federal, state, local or international law or regulation; (n) exploit any person, including but not limited to exploiting any child under 18 years of age; (o) invade the privacy of any person; (p) solicit personal information from a child under 18 years of age; (q) submit false or misleading information to Walkthrough, the Sites or other users; or (r) engage in any other activity reasonably deemed by Walkthrough to be in conflict with the spirit of these Terms and the Privacy Policy. We cannot and do not assure that other users are or will be complying with the foregoing Rules of Conduct or any other provisions of these Terms, and, as between you and us, you hereby assume all risk of harm or injury resulting from any such lack of compliance.
- 8. PROPRIETARY AND PRIVACY PROTECTION FOR OTHER USERS’ CONTENT ON THE SITES.** Walkthrough hereby notifies you that all the information, content, image files, software and materials on the Sites may be protected by U.S. and international copyright and other intellectual property laws and by other applicable laws, including privacy laws. In particular, the Virtual Tour constitutes and comprises intellectual property of Walkthrough. Walkthrough is unable to provide you with permission to copy, display or distribute any third-party materials without the third party’s consent. You may not copy or distribute such material without the written consent of the owner, and you are solely responsible for any copyright or other intellectual property law violations that you may incur as a result of your activities on the Sites. Walkthrough has the absolute right to terminate your account or exclude you from any Site if you use our Services to violate the intellectual property rights or other rights of third parties. You agree to indemnify and hold Walkthrough harmless for any violation of this provision.

**9. INDEMNITY; LIMITATION OF LIABILITY.**

**9.1.** You agree to indemnify, and hold Walkthrough, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) your access to or use of the Sites or Services; (b) your violation of these Terms; (c) your violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right; or (d) any claim that your use of the Sites or Services caused damage to a third party.

**9.2.** YOU ACKNOWLEDGE THAT YOUR ACCESS TO AND USE OF THE SITES OR SERVICES AND ANY RELIANCE UPON EITHER IS AT YOUR SOLE RISK, THAT YOU ASSUME FULL RESPONSIBILITY FOR ALL COSTS ASSOCIATED WITH ALL NECESSARY SERVICING OR REPAIRS OF ANY EQUIPMENT YOU USE IN CONNECTION WITH YOUR USE OF THE SITES OR SERVICES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL WALKTHROUGH BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, IMAGES, DATA OR OTHER INTANGIBLES, EVEN IF WALKTHROUGH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. GENERAL.**

**10.1. Modification.** Walkthrough may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Sites or Services after the "Last Revised" date at the top of these Terms. If you have created an Account, we may notify you of any material changes to these Terms by email sent to the address you have provided to Walkthrough for your Account. Your continued access to or use of the Sites or Services after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications, do not access or use the Sites or Services.

**10.2. Applicable Law and Dispute Resolution.** These Terms shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that Walkthrough has not adhered to these Terms, please contact us by e-mail at [pascal@getawalkthrough.com](mailto:pascal@getawalkthrough.com). We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. If you and Walkthrough are unable to reach a resolution to the dispute, you and Walkthrough will settle the dispute exclusively under the rules of the American Arbitration Association ([www.adr.org](http://www.adr.org)) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. YOU AND WALKTHROUGH AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN WALKTHROUGH AND YOU INDIVIDUALLY. YOU ACKNOWLEDGE AND AGREE THAT YOU AND WALKTHROUGH ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Walkthrough otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Sites or the Services or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred.

**10.3. No Resale of Services.** You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services.

**10.4. Independent Contractors.** No joint venture, partnership, employment, or agency relationship exists between you and Walkthrough as a result of these Terms or use of the Sites or the Services.

- 10.5. Enforcement.** If any legal action is brought to enforce these Terms, the prevailing party will be entitled to reimbursement of its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the other party.
- 10.6. Force Majeure.** Walkthrough will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond Walkthrough's reasonable control.
- 10.7. Waiver.** The failure of Walkthrough to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by Walkthrough in writing.
- 10.8. Construction.** The headings of Sections of these Terms are for convenience and are not to be used in interpretation.
- 10.9. Contact.** Walkthrough is located in or near Denver, Colorado. Any questions, comments or suggestions, including any report of violation of these Terms should be provided to the Administrator as follows:
- By E-mail:                   Pascal@GetAWalkthrough.com
- By Phone:                    941.730.8700
- By Postal Mail:            1624 Market St, Suite 211 Denver, CO 80202
- 10.10. Entire Agreement.** These Terms constitute the entire agreement between you and Walkthrough and govern your use of the Sites and the Services, superseding any prior agreements between you and Walkthrough. The failure of Walkthrough to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you and Walkthrough nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect.