

KIMLEY-HORN AND ASSOCIATES, INC.
TRACTION SOFTWARE AND SERVICE
TERMS AND CONDITIONS

(1) General

These terms and conditions are in addition to those in your License Agreement relating to use of Kimley-Horn's Traction software and related services ("Service").

BY CLICKING "I ACCEPT", OR BY USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS ("TERMS"). If you do not agree to these Terms, you do not have permission to use the Service.

All copyrightable text, sound, graphics and other material, the selection, compilation, arrangement and presentation of all materials, and the overall design of this website and the Service (including the Web pages within this site) are copyrighted by Kimley-Horn and Associates, Inc. and are protected by U.S. and international laws. All rights reserved.

(2) Using the Service

Use of the Service shall be in direct alignment with transportation management, operation, and engineering tasks by a State Department of Transportation (DOT), municipality, or other government institution.

The following are approved uses of the Service: (a) Caching of data for historical record, to remain within the agency network only; (b) Use of the data to supplement traffic management, operation, engineering tasks, such as active corridor monitoring, and before and after timing studies; and (c) dissemination of travel time data through posting on government owned and operated Dynamic Message Signs (DMS) only.

All other usage shall be considered prohibited without express approval by Kimley-Horn. Uses beyond those listed above, or clarification of the above usage, must be communicated directly and in writing to Kimley-Horn to approve or disapprove it its discretion.

Portions of our Service are available on mobile devices and laptops. Do not use the Service in a way that distracts you or prevents you from obeying traffic or safety laws.

We may send you service announcements, administrative messages, and other information related to the Service or about your use of the Service.

(3) Restrictions on Use

You may not: (i) copy, modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Content included in the Service and/or Site, or in any way or publicly display, perform, or distribute them; (ii) make any use of the Content on any other website or networked computer environment for any purpose, or replicate or copy the Content without Kimley-Horn's prior written consent; (iii) interfere with or violate any third party or other user's right to privacy or other rights, including copyrights and any other intellectual property rights of others, or harvest or collect personal information about visitors or users of the Service and/or Site without their express consent; (iv) interfere with or disrupt the operation of the Service and/or Site, or the servers or networks that host the Service and/or Site or make the Service and/or Site available, or disobey any requirements,

procedures, policies, or regulations of such servers or networks; (v) sell, license, or exploit for any commercial purposes any use of or access to the Content and/or the Service and/or Site; (vi) frame or mirror any part of the Service and/or Site without Kimley-Horn's prior express written authorization; (vii) forward any data generated from the Service and/or Site without the prior written consent of Kimley-Horn; (viii) transfer or assign your Service accounts' password, even temporarily, to a third party.

(4) Limited Warranties and Disclaimers

Kimley-Horn warrants that unmodified Software will substantially conform to the published Documentation.

Data and Web Services Disclaimer. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, Kimley-Horn does not warrant that Data and Web Services will meet Licensee's needs or expectations, that the use of Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. Kimley-Horn and its licensors are not inviting reliance on Data or Web Services, and Licensee should always verify actual Data or Web Services.

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, KIMLEY-HORN DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. KIMLEY-HORN DOES NOT WARRANT AND DISCLAIMS THAT SOFTWARE, DATA, WEB SERVICES, OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. SOFTWARE, DATA, WEB SERVICES, AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

Licensee's exclusive remedy and Kimley-Horn's entire liability for breach of the limited warranties shall be limited, at Kimley-Horn's sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a workaround for Software; or (iii) return of the license fees paid by Licensee for Software or Documentation that does not meet Kimley-Horn's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of Software or Documentation and executes and delivers evidence of such actions to Kimley-Horn or its authorized distributor.

(5) Limitations of Liability

Kimley-Horn shall not be liable to licensee for lost profits or any indirect, special, incidental, or consequential damages arising out of or related to this license agreement or use of software, data, web services, or documentation, however caused on any theory of liability, whether or not Kimley-Horn or its licensors have been advised of the possibility of such damage. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

Kimley-Horn's total cumulative liability hereunder, from all causes of action of any kind, including but not limited to, contract, tort (including negligence), strict liability, breach of warranty, misrepresentation, or otherwise, shall not exceed the amount paid by licensee for software, data, web services, or documentation pursuant to this license agreement.

Licensee agrees that the limitations of liability and disclaimers set forth in this License Agreement will apply regardless of whether Licensee has accepted Software, Data, Web Services, or Documentation or any other product or service delivered by Kimley-Horn. The parties agree that Kimley-Horn has set its fees and entered into this License Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

(6) Assumption of Risk

This service uses external sources for mapping, data, traffic, directions, and other content. Kimley-Horn does not review or warrant the accuracy of this content. Use of this service is at your own risk.

(7) Privacy Policy

(7.1) *What information do we collect?*

We may collect, store and use the following kinds of personal data:

- (a) information about your visits to and use of this website;
- (b) information about any transactions carried out between you and us on or in relation to this website, including information relating to any purchases you make of our goods or services;
- (c) information that you provide to us for the purpose of registering with us and/or subscribing to our website services and/or email notifications.
- (d) location data you provide to us via the mobile application for the purpose of recording travel time data (latitude/longitude, speed, altitude, heading, user ID, and timestamp, collected once per second only while the user is actively using the application to record a trip (this data is for the express use of the public agency in possession of the Service subscription and as such, is made available to others within your agency)
- (e) error log data manually initiated by the user to upload the last few days' worth of error logs, which includes only error data and a user ID
- (f) anonymized user data from Microsoft App Center such as device type, device OS, amount of time the app is run, and application crash reports.

(7.2) *Information about website visits*

We may collect information about your computer and your visits to this website such as your IP address, geographical location, browser type, referral source, length of visit and number of page views. We may use this information in the administration of this website, to improve the website's usability, and for marketing purposes.

We use cookies on this website. A cookie is a text file sent by a web server to a web browser, and stored by the browser. The text file is then sent back to the server each time the browser requests a page from the server. This enables the web server to identify and track the web browser.

We may send a cookie which may be stored on by your browser on your computer's hard drive. We may use the information we obtain from the cookie in the administration of this website, to improve the website's usability and for marketing purposes. We may also use that information to recognize your computer when you visit our website, and to personalize our website for you. Our advertisers may also send you cookies.

We may use anonymous cookies to record non-personal information such as website activity, date and time of visit, and domain type. We may use this information for retargeting purposes.

Most browsers allow you to refuse to accept cookies. (For example, in Internet Explorer you can refuse all cookies by clicking “Tools”, “Internet Options”, “Privacy”, and selecting “Block all cookies” using the sliding selector.) This will, however, have a negative impact upon the usability of many websites, including this one.

(7.3) *Using your personal data*

Personal data submitted to the Service will be used for the purposes specified in this privacy policy or in relevant parts of the Service. In addition to the uses identified elsewhere in this privacy policy, we may use your personal information to:

- (a) improve your browsing experience by personalizing the website;
- (b) send to you marketing communications relating to our business or the businesses of carefully-selected third parties which we think may be of interest to you by post or, where you have specifically agreed to this, by email or similar technology.
- (c) provide other companies with statistical information about our users – but this information will not be used to identify any individual user.

(7.4) *Third-party websites*

The website contains links to other websites. We are not responsible for the privacy policies of third-party websites.

(8) *Indemnification*

You agree to defend, indemnify and hold Kimley-Horn and its employees, officers, and directors, harmless from any and all claims that relate to your use of the Services or any violation of these Terms by you, including any liability or expense arising from claims, losses, damages, suits judgments, litigations costs or attorneys’ fees.

(9) *Linking to this Site*

All links to this website must be approved in writing by Kimley-Horn, except that Kimley-Horn consents to links in which the link and the pages that are activated by the link do not: (a) create frames around any page on this website or use other techniques that alter in any way the visual presentation or appearance of any content within this site; (b) misrepresent your relationship with Kimley-Horn; (c) imply that Kimley-Horn approves or endorses you, your website, or your service or product offerings; and (d) present false or misleading impressions about Kimley-Horn or otherwise damage the goodwill associated with the Kimley-Horn name or trademarks. As a further condition to being permitted to link to this site, you agree that Kimley-Horn may at any time, in its sole discretion, terminate permission to link to this website. In such event, you agree to immediately remove all links to this website and to cease using any Kimley-Horn trademark.

(10) *Ownership*

Kimley-Horn does not claim ownership over the transportation data collected through the Service.

- (a) The Licensee owns the crowd-sourced travel time data recorded for its agency sourced from the Google Maps API, with usage subject to the terms and conditions specified in this document and the Software Access and License Agreement document.
- (b) The Licensee owns any travel time data recorded from the mobile application by its users. As configured by the Licensee’s Administrative User, Licensee users may have privileges to modify or delete portions of this data. Kimley Horn will retain this data for a

period of 30 days after termination of the license agreement, unless alternate arrangements were agreed to in writing before the end of such period. Upon request and before the data expiration period, Kimley Horn will assist in exporting such data to the Licensee, provided to the Licensee at Kimley Horn's standard prevailing rate.

- (c) The Licensee and the Provider jointly own website data such as route configuration and scheduling of data collection. Kimley Horn retains the right to delete such data at its discretion due to inactivity or absence of a current agreement.
- (d) Kimley Horn owns website data such as usage of the website and mobile application.

(11) Changes to Terms

We may update these Terms from time-to-time by posting a new version on our website. Continued use of the Service designates acceptance of the Terms and any changes.

(12) Waiver

No delay or omission by Kimley-Horn in exercising any term or condition of these Terms is deemed a further or continuing waiver. Failure by Kimley-Horn to assert any right under these Terms does not constitute a waiver of such right.