

**DRAWBAR  
TERMS OF SERVICE**

THESE TERMS OF SERVICE (the "Terms of Service") are effective as of the first date on which the entity agreeing hereto (the "Customer") indicates its acceptance of these Terms of Service by registering for and accessing the Service (as hereinafter defined) or by signing an order form with respect to the Service that is countersigned by Company (an "Order Form" and such date, the "Effective Date"). These Terms of Service shall be a binding agreement between Customer and Drawbar, LLC ("Company") (each, a "Party" and together, the "Parties"). The Terms of Service govern the Parties' respective rights and obligations with respect to the provision of, and access to, those certain web-based services (the "Service") offered by Company on and through its website (the "Site") for internal business use by Customer in connection with tracking assets, hours of service and testing for signalized crossings (the "Purpose"). Customer acknowledges that it has read these Terms of Service carefully before accessing or using the Service and agrees to be bound by the terms and conditions herein. To the extent Company makes any material changes to these Terms of Service, it shall use commercially reasonable efforts to notify and seek Customer's acceptance of such changes prior to such changes becoming effective as to Customer. In the event of any conflict between the Terms of Service and any Master Services Agreement executed by the Parties, the Master Services Agreement shall control.

**1. SERVICE.** Subject to Customer's continued compliance with these Terms of Service, and in consideration of the Usage Fee (as hereinafter defined) paid by Customer to Company hereunder, Company grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable, non-sub licensable right and subscription to use and access the Service through the Site, solely in connection with the Purpose. All features, content, specifications, Site Deliverables, data and layout of the Service described or depicted on, or generated through, the Site are subject to change at any time in Company's sole and absolute discretion. The rights granted by Company to Customer for the Service are limited to use by employees and agents of Customer who Customer authorizes to access and use the Service and who use the Service strictly in accordance with the Terms of Service.

**2. FEES AND PAYMENT TERMS.** In consideration of Company granting Customer access to the Service, Customer agrees to pay to Company a non-refundable usage fee in the amount and on the terms set forth (a) on the Order Form, or (b) if there is no Order Form, Company's then-current fee schedule (the "Usage Fee"), which shall be charged on a monthly basis. Unless otherwise agreed to by the Parties in an Order Form, Customer shall be initially charged the Usage Fee on the Effective Date, and on a monthly basis thereafter. Upon registration, Customer shall be required to submit credit card information for the account that will be automatically charged for the Usage Fee. The Usage Fee shall be processed on a reoccurring basis by Company and automatically charged to Customer's credit card. Company uses a third-party intermediary to manage credit card processing, and this intermediary is not permitted to store, retain or use Customer's billing information except to process Customer's credit card information for Company. Company's handling of Customer's personal information shall be in accordance with Company's privacy policies and practices, which will be provided to Customer upon request. If Customer's credit card payment information is entered in error or if payment does not go through for processing, and Customer fails to update or correct such payment information upon Company's request, Company may immediately terminate these Terms of Service and suspend Customer's account without notice. The Usage Fee does not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state or federal jurisdiction that may be levied upon the Service. If taxes should be imposed on any of the foregoing, Customer will pay all such taxes (excluding taxes imposed on or measured by Company's income) and hold Company harmless for the payment of any and all such taxes.

**3. CUSTOMER DATA.** Customer acknowledges and agrees that, in order for Customer to fully utilize certain portions of the Service, Customer must input data into the Service ("Customer Data"). By doing so, Customer is not relinquishing any of its ownership or rights in and to such Customer Data. However, Customer hereby grants to Company, and Company hereby accepts, a non-exclusive, sublicensable, perpetual, worldwide license to use, host, reproduce, store and otherwise distribute the Customer Data in any and all ways necessary for Company to provide to Customer the Service, to generate the Site Deliverables, and for all other legitimate business purposes of Company related to the Service. Customer, not Company, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of all Customer Data, and Company shall not be responsible or liable for the deletion, correction, inaccuracy, destruction, damage, loss or failure to store any Customer Data. Customer acknowledges and agrees that Company is not responsible for examining or evaluating, and makes no guarantees regarding, the accuracy, completeness, timeliness, validity, legality, decency, quality or any other aspect of the Customer Data, and Company shall have no liability to Customer or any third party for its use of or reliance on the Customer Data. Company reserves the right to remove and/or discard Customer Data without notice. Company will, upon request, provide Customer with access to the Customer Data during the Term, in a form reasonably agreed to by Company and Customer. Unless the Parties specifically agree otherwise, Company will have no obligation to maintain any Customer Data upon termination of these Terms of Service.

**4. SITE DELIVERABLES.** As part of the Service, Company may generate reports, studies, charts, presentations or other deliverables (collectively, the "Site Deliverables"). While Company makes extensive efforts to present accurate and up to date Site Deliverables, Company makes no representations or warranties as to the Site Deliverables, and the Parties acknowledge that the Site Deliverables may be inaccurate, incomplete, unreliable or out of date. Customer should independently verify the accuracy, completeness and relevance of any information it receives from Company as part of a Site Deliverable before relying on it for any purpose of material impact. Company is not responsible for damages from lost profits, loss of business or any other losses arising out of Customer's use of or reliance on the Site Deliverables, Service or Site.

**5. SERVICE RESTRICTIONS.** Customer agrees it will not: (a) rent, lease, license, loan, transfer, assign, sell, copy, sublicense, commercialize, distribute or otherwise use or provide access to the Site, the Service or Site Deliverables, or the underlying software used therein, in whole or in part, on a temporary or permanent basis, except as expressly permitted by these Terms of Service; (b) use the Service, the Site Deliverables, the underlying software used therein, or any portion thereof to create any tool, application or software

product that can be used to create software applications of any nature whatsoever; (c) use the Service, Site Deliverables, or the Site in any unlawful manner whatsoever; (d) remove, alter, cover, obfuscate, or otherwise deface any proprietary notices on the Site, the Service, or the Site Deliverables; (e) access the Service by any means other than through the Site; (f) spider, data-mine, scrape, probe or otherwise attempt to abuse the Site or Service; or (g) modify, alter, adapt, copy, decompile, disassemble, reverse engineer, reverse assemble or emulate the functionality, reverse compile, attempt to derive the source code of, reduce to human readable form, or create derivative works of the Service, the Site or the underlying software used therein, in whole or in part.

**6. REGISTRATION.** Prior to Customer being able to access the Service, Customer will be required to register for the Service on the Site. As part of the registration process, Customer will be required to provide certain information, and will be awarded a username and password. Customer shall remain responsible for maintaining the security of its account, including its username and password, and shall not disclose it to any third party except as authorized herein. Company will not be responsible or liable for any loss or damage caused by Customer's failure to comply with its security obligation. Customer remains responsible for all activity occurring under its accounts, and shall notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security.

**7. SUPPORT, MAINTENANCE AND UPGRADES.** Provided Customer is not in breach of these Terms of Service and provided these Terms of Service remain in effect, Company will provide general support services related to the Service during the hours of 8:00 AM through 5:00 PM, CST, Monday through Friday (not including holidays). This schedule may change from time to time, as determined by Company in its sole discretion. General support services will include email communication during the time frame described above. Any support services beyond those described herein, or any support services provided outside of the time frame described above, may be provided by Company at Company's sole and absolute discretion, and upon terms determined by Company. Customer understands and acknowledges that Company has the right to modify and update (or refrain from modifying and updating) the Site and Service at any time, provided, however, that Company will notify Customer of any material changes in the existing functionality or capabilities of the Service. Updates and improvements provided as part of Company's general maintenance services shall be made in Company's sole and absolute discretion. Company shall be under no obligation to provide any updates, upgrades, improvements, or enhancements. All right, title and interest in and to updates, upgrades, improvements, and enhancements shall vest in and belong to Company. Customer specifically acknowledges that some additional services or upgrades may be developed for the Service, for which Company may require the payment of additional fees or other terms and conditions in order for Customer to be entitled to use such additional services or upgrades, which services or upgrades shall not be deemed to be included in the Service hereunder absent payment of such fees or compliance with such conditions.

**8. BACKUP; DISASTER RECOVERY; SECURITY.** Company agrees to maintain, through itself or through third party service providers, backup and disaster recovery facilities sufficient to permit it to recover and make available to Customer under these Terms of Service the Site, Service, Site Deliverables, and Customer Data within forty eight (48) hours of any system failures or data loss. Company shall maintain adequate security precautions to minimize the likelihood of any unauthorized access through the Internet to Customer Data or other data provided by Customer to Company through the Service, including, among other things, the use of a secure server, protective firewalls and encryption.

**9. INTELLECTUAL PROPERTY.** Except with respect to the Customer Data, which Company acknowledges is the property of Customer, Customer acknowledges that Company and/or the third party sources of Company's information are the owners of all right, title and interest in and to all Intellectual Property (as hereinafter defined) embodied in or related to the Service, the Site, Site Deliverables and the underlying software used therein, in any form whatsoever, including: (a) the technology available as part of or embodied in the Service; and (b) all content or other material contained in the Service, the Site Deliverables or the Site. Customer claims no proprietary rights in any Intellectual Property of Company, the Site, the Site Deliverables, or the Service, and will be entitled to only such rights as are granted to Customer pursuant to any and all agreements between Company and Customer. The Site Deliverables and the Service may be used only in accordance with the terms and conditions of these Terms of Service. In the event of any third party claim that the Site, the Site Deliverables, or the Service infringes such third party's Intellectual Property rights, Company will be solely responsible for the investigation, defense, settlement and discharge of any such claim, subject to these Terms of Service. For purposes of these Terms of Service, "Intellectual Property" shall mean all or any of the following: (a) patents, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (c) copyrights, copyrightable works (including, without limitation, computer software programs and documentation, algorithms, program code, specifications, reports and designs), mask works and rights in data and databases; (d) trade secrets, knowledge, know-how, techniques, ideas, concepts and other proprietary information; and (e) all other intellectual property rights, in each case whether existing prior to the Effective Date or whether developed in the course of either party's performance of its obligations under these Terms of Service, whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world.

**10. CANCELLATION, TERM AND TERMINATION.** These Terms of Service shall become effective as of the Effective Date and shall continue in effect for successive one year periods (each, a "Contract Year") unless and until terminated by either Party in accordance with this Section (the "Term"). Customer, as the account owner, is responsible for cancelling its account and may cancel the account by submitting a written request for such cancellation to Company at any time. Upon such cancellation, Customer shall pay to Company the lesser of (a) four (4) months of Usage Fees, or (b) Usage Fees for the remainder of the then-current Contract Year. Once Customer cancels its account, Company reserves the right to delete all content related to such account in the normal course of operation. Company reserves the right to (y) modify or discontinue, temporarily or permanently, the Service at any time; and (z) refuse any and all current and future use of the Service, suspend or terminate Customer's account or any part thereof (or Customer's use of the Service), and remove and discard any of Customer's content, including Customer Data, if Customer materially breaches any

provision in these Terms of Service. Company will use reasonable efforts to contact Customer directly via email to warn Customer prior to suspension or termination of its account. Upon termination of these Terms of Service for any reason, Customer shall immediately cease any use of the Service and any Site Deliverables that have not been personally delivered to Customer. All terminations shall be made by Company in its sole and absolute discretion, and Company shall not be liable to Customer or to any third party for any damages or liability that may arise out of or relate to the termination of Customer's account.

**11. MUTUAL REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants as follows: (a) It has all necessary power and authority to enter into these Terms of Service, to grant to the other Party all of the rights granted hereby and to perform its obligations hereunder; (b) these Terms of Service are and shall remain the valid, legal and binding obligation of such Party, enforceable against it in accordance with its terms, except where enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights or by principles of equity; and (c) the execution, delivery and performance of these Terms of Service does not conflict with or result in a breach of, any agreement, written or oral, to which it is a party or by which it or its property is bound.

**12. LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE PROVIDED HEREIN, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR USE, INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY OF THE LIMITED REMEDIES OF THESE TERMS OF SERVICE FAILS TO FULFILL ITS ESSENTIAL PURPOSE. COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY BREACH OF SECURITY ON THE SITE. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY FOR ANY CLAIM RELATED TO THESE TERMS OF SERVICE OR OTHERWISE ARISING FROM CUSTOMER'S USE OR RELIANCE ON THE SITE, SERVICE OR SITE DELIVERABLES EXCEED PAYMENTS MADE BY CUSTOMER TO COMPANY DURING THE SIX (6) MONTHS PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

**13. NO WARRANTY.** CUSTOMER AGREES TO USE THE SERVICE, THE SITE DELIVERABLES AND THE SITE AT ITS SOLE RISK, AND COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ITS USE OF, ACCESS TO, OR RELIANCE ON THE SERVICE, THE SITE, OR THE SITE DELIVERABLES. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND THEREFORE ARE NOT SUBJECT TO THE CONTROL OF COMPANY. CUSTOMER ALSO ACKNOWLEDGES THAT COMPUTER SYSTEMS ARE INHERENTLY UNSTABLE AND MAY MALFUNCTION OR CEASE TO FUNCTION AT ANY TIME WITHOUT WARNING. MALFUNCTION OR CESSATION OF INTERNET SERVICES BY INTERNET SERVICE PROVIDERS OR OF ANY OF THE NETWORKS THAT FORM THE INTERNET MAY MAKE THE SERVICE OR SITE TEMPORARILY OR PERMANENTLY UNAVAILABLE. THE SERVICE, SITE DELIVERABLES, SITE, INTELLECTUAL PROPERTY AND ANY RELATED PRODUCTS AND SERVICES ARE SUPPLIED TO CUSTOMER "AS IS." NEITHER COMPANY NOR ANY THIRD PARTY INFORMATION OR SERVICE PROVIDER OF COMPANY GIVES ANY WARRANTIES, EXPRESS OR IMPLIED, RELATED THERETO, EXCEPT AS EXPRESSLY PROVIDED HEREIN. COMPANY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, NEITHER COMPANY NOR ANY THIRD PARTY INFORMATION OR SERVICE PROVIDER OF COMPANY MAKES ANY WARRANTIES THAT (A) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, (B) THE SERVICE OR SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE, SITE DELIVERABLES OR SITE WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, SITE DELIVERABLES, INFORMATION OR OTHER MATERIAL RECEIVED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE, SITE DELIVERABLES OR SITE WILL MEET CUSTOMER'S EXPECTATIONS, OR (E) ANY ERRORS IN THE SOFTWARE USED TO OPERATE THE SERVICE AND SITE WILL BE CORRECTED. ANY MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE OR SITE, INCLUDING THE SITE DELIVERABLES, ARE ACCESSED AT CUSTOMER'S OWN DISCRETION AND RISK, AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. FURTHER, THE SERVICE, THE SITE AND DATA MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**14. INDEMNITY.** Customer agrees to indemnify, defend and hold Company and its respective affiliates, distributors, resellers, licensors, customers, members, managers, employees, agents, representatives, successors and permitted assigns, harmless from and against any and all claims, suits, actions, proceedings, damages, costs, liabilities, losses, fines, penalties, and expenses (including, but not limited to, reasonable legal fees) (collectively, "Losses") arising out of, relating to or resulting from (a) the use or access of, or reliance on, the Site, Site Deliverables or Service by Customer or any other third party whose access to or reliance on such Site, Site Deliverables or Service is made available, directly or indirectly, by, through or because of Customer, (b) the use or access of the Customer Data by Customer or any other third party whose access to such Customer Data is made available, directly or indirectly, by, through or because of Customer, (c) any negligent or willful act or omission by Customer, or (d) Customer's breach of these Terms of Service.

**15. CONFIDENTIALITY.** During the Term, Company may provide the Customer with certain confidential and proprietary information ("Confidential Information"). Confidential Information includes, but is not limited to, the Site Deliverables, all code, inventions, techniques, algorithms, know-how and ideas, all business, financial and technical trade secrets, any written information which is marked "Confidential," any information which is orally disclosed, identified as confidential at the time of disclosure and confirmed in writing as being confidential within thirty (30) days thereafter, as well as any information or material which, by its nature and under the circumstances surrounding its disclosure, is generally considered proprietary and confidential, regardless of whether it is marked or properly reduced to writing. However, "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure or becomes publicly known thereafter through no fault of the Customer; (b) is lawfully received by the Customer

from a third party not under an obligation of confidentiality to the Company, (c) is published or otherwise made known to the public by the Company, or (d) was generated independently by the Customer before disclosure by the Company. The Customer will refrain from using the Company's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under these Terms of Service. The Customer will likewise restrict its disclosure of the Company's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Customer to perform its obligations and enjoy its rights under these Terms of Service. Such persons will be informed of and will agree to the provisions of this Section, and the Customer will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them.

**16. FORCE MAJEURE.** Neither Party shall be liable for damages hereunder for a delay or failure in its performance of any obligation under these Terms of Service, other than Customer's obligation to pay the Usage Fee, as a result of causes beyond its reasonable control, including acts of God, fire, riots, acts of war, terrorism, labor disputes, lockouts, embargoes, insurrection, riots, inability to obtain materials or labor due to governmental acts, rules, regulations or directives, utility or communication interruptions, transportation delays, power failure, computer failure, breakdown of machinery, accidents, fires, floods or other natural disasters (each a "Force Majeure Event"). Upon the giving of prompt written notice to the other Party of a Force Majeure Event, the time of performance by the Party so affected shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

**17. MISCELLANEOUS.**

**17.1** Customer will be responsible for providing any hardware, devices or applications necessary to access the Site, Service, Site Deliverables and Customer Data and to otherwise make the Customer Data available to Company in order to permit it to provide the Service.

**17.2** These Terms of Service shall be governed in all respects by the laws of the State of Nebraska as they apply to agreements entered into and to be performed entirely within Nebraska between Nebraska residents, without regard to conflict of law provisions. Customer agrees that any claim or dispute it may have against Company must be resolved by a court located in Douglas County, Nebraska. Customer agrees to submit to the personal jurisdiction of the courts located within Douglas County, Nebraska, for the purpose of litigating all such claims or disputes.

**17.3** If Customer should have any questions, complaints or claims with respect to the Service, such questions, complaints or claims should be directed to:

Drawbar, LLC  
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\_\_\_\_\_  
\_\_\_\_\_

**17.4** These Terms of Service may not be assigned or transferred by Customer without the express written consent of Company, which may be granted or withheld in Company's sole discretion.

**17.5** The words "or" and "nor" are inclusive and include "and." "Including" means "including without limitation" and does not limit the preceding words or terms. The singular shall include the plural and vice versa. References to "Sections" shall mean the Sections of the Terms of Service, unless otherwise expressly indicated. The headings or titles preceding the text of the Sections are inserted solely for convenience of reference, and shall not constitute a part of these Terms of Service, nor shall they affect the meaning, construction or effect of the Terms of Service.

**17.6** These Terms of Service constitute the entire agreement of the Parties regarding the subject matter herein and supersede all prior or contemporaneous agreements, understandings or communications between the parties, whether written or oral. These Terms of Service may not be amended, modified, qualified or otherwise changed or altered except in writing executed by an authorized signatory of each Party hereto.

**17.7** No agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by these Terms of Service.

**17.8** If any provision of these Terms of Service or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable, the remainder of these Terms of Service shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any deviation by either Party from the terms and provisions of these Terms of Service in order to comply with applicable laws, rules or regulations shall not be considered a breach of these Terms of Service. The provisions that expressly or by their nature survive the termination of these Terms of Service, or those provisions that will not be fully performed upon termination or expiration of these Terms of Service, shall survive the termination or expiration of these Terms of Service, as applicable.

**17.9** Customer shall comply with all applicable laws, rules and regulations with respect to the performance of its obligations hereunder and otherwise with respect to its access and use of the Site and Service, including all applicable laws regarding the transmission of technical data exported from the United States or the country in which Customer resides.

**17.10** The terms that, either expressly survive the termination of these Terms of Service or by their nature will not fully be performed during the Term, including but not limited to Sections 3, 4, 9-14 and 17, shall survive the termination or expiration of these Terms of Service, to the extent applicable.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICE, UNDERSTANDS THEM AND WILL BE BOUND BY THE PROVISIONS CONTAINED HEREIN. CUSTOMER FURTHER ACKNOWLEDGES THAT THESE TERMS OF SERVICE MAY NOT BE AMENDED BY CUSTOMER WITHOUT THE EXPRESS WRITTEN CONSENT OF COMPANY.