

**Denver Regional Council of Governments**  
**Data from *Focus* Regional Travel Model**  
**RELEASE AGREEMENT**  
(version September 2017)

This Release Agreement is made and entered into by and between the undersigned recipient and the Denver Regional Council of Governments (DRCOG) with respect to DRCOG's release to recipient of data from DRCOG's *Focus* regional travel model.

**The recipient hereby acknowledges and agrees as follows:**

**1.0 Data Source**

1.1 DRCOG is providing the following unaltered, full-precision data output from the latest *Focus* model (also note specific model output years):

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at the request of the Recipient for use with the following project (the "Project"):

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For the client (if applicable): \_\_\_\_\_

Client contact name: \_\_\_\_\_

1.2 DRCOG's modeling data are developed at a regional level of detail commensurate with planning mandates and responsibilities. As consideration for the release to the Recipient of the data, the Recipient agrees to all terms and conditions of release described in this Release Agreement.

1.3 This Release Agreement gives to the Recipient solely a non-exclusive revocable license to use, as limited herein, the data. Recipient agrees that the data is the sole property of DRCOG and that the data shall not be sold or used for any purpose not related to the uses and purposes set forth in this Release Agreement without written permission of DRCOG.

1.4 The data provided is intended for the recipient's use in the Project only. DRCOG provides this information on an "as is" basis and makes no guarantee, representation or warranty, either express or implied, that the data will be error free. DRCOG further makes no guarantees, representations or warranties, either express or implied, as to the completeness, accuracy or correctness of the data, or as to the merchantability or fitness of the data for a particular use or purpose. DRCOG is not responsible to any user for any costs, expenses, liabilities or damages arising from inconsistencies in its forecasts or from any use of the information. Recipient releases DRCOG from any claims, judgments or damages, consequential or direct, arising from any errors or omissions contained within the forecast data provided, or any part thereof, or arising from any reliance upon the forecast data or omissions therefrom.

1.5 Because the DATA is inherently complex, constantly changing, and may not be completely free of errors, Recipient is hereby advised to verify its work. In no event shall DRCOG be liable for any direct, indirect, special, incidental, or consequential damages arising out of the use of or inability to use the Data. Specifically, DRCOG is not responsible for any costs including, but not limited to, those incurred as result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs.

1.6 DRCOG's sole liability and Recipient's exclusive remedy for any substantial defect which impairs the use of the Data for the purpose stated herein shall be the right to terminate this Agreement.

## **2.0 Conditions for Release**

2.1 Recipient is expected to be familiar with the operation, analysis, assumptions and limitations of travel demand models. DRCOG staff are available to advise users. Recipients are expected to make use of available publications and guidance on the refinement and presentation of travel demand model data.

2.2 For traffic volume or transit ridership forecasts, the National Cooperative Highway Research Program (NCHRP) Reports 255 and 765 provide guidance on the use of regional travel demand models for corridor- and project-level studies. That is, determination of estimated future year traffic volumes must be based on the change between base year and future year model forecasts.

2.3 Focus model assignment volumes contain more internal decimal places (precision) than are justified by model accuracy. For publication purposes, forecast recipients are encouraged to use their own professional engineering judgment in making post-model adjustments and rounding. (Table 4-8 of NCHRP Report 765 offers guidance for rounding.) *Focus* model forecasts are generally based on the DRCOG Fiscally-Constrained Regional Transportation Plan networks. The *Focus* model and its inputs are updated periodically to incorporate the most recent planning assumptions and other information. DRCOG makes no guarantee of forecast consistency from forecast cycle to forecast cycle.

2.4 Recipient agrees to cite raw or adjusted *Focus* model data by crediting DRCOG and identifying the cycle and staging year for which the results are presented. DRCOG will identify the staging year when transmitting the data. Recipient further agrees to identify any parties making further adjustments to *Focus* model data as provided. Such adjusted data shall not be presented as having been generated, reviewed or approved by DRCOG.

2.5 Data requests will be accepted and processed as staffing availability and agency priorities permit. Requests by member governments, planning partners, and their agents have priority over requests by others. DRCOG prefers to make *Focus* model data available in their native TransCAD or SQL Server formats. Requests to convert forecasts to other file formats, such as ESRI shape file, dBase, or comma-separated value files will be considered, but may result in longer processing times.

2.6 DRCOG welcomes reports of unexpected or unusual model results by recipients. DRCOG will attempt to identify the source of such unusual result and may make appropriate corrections at the next model update cycle.

### **3.0 Miscellaneous Terms and Conditions**

3.1 To the extent permitted by law, the recipient shall indemnify and hold harmless DRCOG, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney's fees, arising out of recipient's performance or non-performance of this Release Agreement or from the recipient's use of the Focus model data.

3.2 DRCOG retains the right to change, update, or withdraw permission to use the data and to terminate this Release Agreement without notice at any time for any or no reason. In the event of termination, recipient shall return to DRCOG all copies of the data and any other files and information released pursuant to hereto without penalty or right to cause of action or recourse against DRCOG.

3.3 All terms and conditions of this Release Agreement shall be binding upon recipient and any employee, agent or third-party of recipient. Any breach of duties or obligations specified herein by any of recipient's employees, agents or third parties shall be deemed to be a breach on the part of the recipient.

3.4 The laws of the State of Colorado and any applicable rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Release Agreement. The terms of this Release Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term of provision hereof.

3.5 This Release Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment signed by both parties. Any DRCOG waiver of any alleged breach by the recipient or third-party agents of the recipient is not to imply a waiver of any subsequent breach.

3.6 All notices required and permitted pursuant to this Release Agreement shall be in writing and shall be deemed given when personally served or three days after deposit in the United States Mail, postage prepaid, registered or certified, return receipt requested, and addressed to the party to whom notice is intended to be given. Any such notice or other communication shall be effective when received as indicated on the delivery receipt, if by hand delivery or overnight carrier; on the United States mail return receipt, if by United States mail; or on facsimile transmission receipt. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

3.7 The recipient warrants that it possesses the legal authority to enter into this Release Agreement. The undersigned also warrants that she/he is duly authorized to enter into this agreement on behalf of the recipient and to bind the recipient to its terms and conditions.

3.8 In the event of breach of this Agreement, the sole and exclusive remedies are termination of this Agreement upon ten days written notice to Recipient, or DRCOG may seek an injunction or pursue an action for damages in the event that DRCOG believes that Recipient's use of the Data is not in

accordance with the terms of this Agreement. In the event of termination, Recipient shall return to DRCOG all copies of the Data received from DRCOG.

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Authorized model data recipient NAME and TITLE

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SIGNATURE

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Recipient address and phone number

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DATE

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DRCOG Approval Signature

Date: \_\_\_\_\_