

(link at <https://account.emodal.com/Home/TermsOfUse>)

Terms of Service

Last Modified: April 1, 2020

PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING THIS WEBSITE OR ANY SERVICES OFFERED HEREIN. By using or downloading information from this Website, you represent that you have read and understand these Terms of Service and agree to be bound by them. If you do not agree with these Terms of Service, in whole or in part, please do not continue to use this Website or Service.

To fully use all features of this Website, you must register. Registration requires a valid email address.

1. Changes to Terms of Service

Advent Intermodal Solutions LLC (“Company”, “us”, or “we”) may modify these Terms of Service at any time, without notice, by updating this page. Please check this page periodically for changes since your continued use of this Website following the posting of changes will indicate your acceptance of those changes.

2. Copyright and Restrictions on Use

The Website and its entire contents, features, services and functionality (including, but not limited to, all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof) (collectively, “Materials”), as well as its organization and design are the property of Company or its suppliers and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. These Terms of Service permit you to use the Website for your personal, non-commercial use only. You may not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the Material, except as follows:

- Your computer may temporarily store copies of Materials in RAM incidental to your accessing and viewing those Materials.
- You may store files that are automatically cached by your web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the Website for your own personal, non-commercial use and not for further reproduction, publication or distribution.

You may use the Website only for lawful purposes and in accordance with these Terms of Service. You agree to not:

- Use the Website in any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- Engage in any conduct that restricts or inhibits any other party’s use or enjoyment of the Website, or which, as determined by us, may harm us, our customers or users of the Website or expose them to liability.

- Use the Website in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Website, including their ability to engage in real time activities through the Website.
- Use any page-scrape, robot, spider or other automatic device, process, algorithm, program or methodology to access the Website for any purpose, including monitoring or copying any of the Material.
- Use any manual process to monitor or copy any of the Material or for any other unauthorized purpose without our prior written consent.
- Use any device, software or routine that interferes with the proper working of the Website.
- Introduce any viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer or database connected to the Website.
- Otherwise attempt to interfere with the proper working of the Website.
- Reverse engineer, disassemble or decompile any software contained on or accessed through the Website.

3. **Conditions of Use**

In connection with each transaction and proposed transaction through access or use of any of the Website or any Website-related services, you acknowledge and agree that: (a) Company has provided the Website to serve only as a medium to facilitate the initiation of a commercial transaction between or among parties other than Company; (b) each transaction and proposed transaction shall be directly between or among parties other than Company; (c) Company is not and shall not be a party to any transaction; (d) Company does not owe any fiduciary duty to any party or to have any special relationship with any party; (e) Company may or may not be a manufacturer, distributor or seller of any goods or services in a transaction; (f) the parties (other than Company) are responsible for determining and ensuring that all transactions comply with applicable law, including, without limitation, payment of applicable taxes; and (g) Company may or may not have control over any transaction, therefore, registered users agree that they will proceed under the assumption that Company does not.

4. **Intellectual Property Notice**

Nothing contained in these Terms of Service shall be construed as conferring any license or right to any trademark or other intellectual property right of Company, its suppliers or any other party. “eModal®”, “eModal™ Data Services” and “Advent Intermodal Solutions LLC” and the related logos displayed throughout this Website are the trademarks or registered trademarks of Company. You may not display, use as a link, or otherwise use any of the trademarks, trade names, service marks or logos of Company or its suppliers without the prior written consent of the owning party. All other trademarks, trade names, service marks and logos are the property of their respective owners.

5. **Compliance with Law**

We control and operate this Website from our offices or from a supplier's designated datacenter. Company makes no representation that the Materials are appropriate or available

for use in a particular location. You are solely responsible for compliance with all applicable laws and regulations that may govern your access and use of this Website.

6. Other Businesses and Links

Reference to any specific commercial product, content provider, process, or service by trade name, trademark, service mark, logo or otherwise does not constitute or imply endorsement by Company or its suppliers. This Website may contain links to websites or be linked to websites not under the control of Company or its suppliers. Company and its suppliers do not endorse the companies, products or websites that are linked to this Website. Accordingly, Company and its suppliers do not assume any responsibility or liability for the actions, products or content of linked websites. If you decide to access any of the third-party websites linked to this Website, you do so entirely at your own risk.

7. Disclaimers

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, THIS WEBSITE AND THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. COMPANY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. DUE TO THE COMPLEX NATURE OF SOFTWARE AND THE INTERNET, COMPANY AND ITS SUPPLIERS DO NOT WARRANT THAT THIS WEBSITE OR THE MATERIALS: (A) ARE COMPLETELY ERROR FREE; (B) WILL OPERATE WITHOUT INTERRUPTION; (C) ARE CURRENT, ACCURATE OR COMPLETE; (D) ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (E) ARE FREE OF VIRUSES, WORMS OR OTHER HARMFUL COMPONENTS; OR (F) WILL OTHERWISE MEET YOUR NEEDS.

Computer systems are vulnerable in varying degrees to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, attacks by hackers and other problems ("E-Problems"). We have taken reasonable steps so that E-Problems will not materially affect our business, but do not guarantee that our Website is immune to E-Problems. It is your responsibility to protect yourself from E-Problems. Steps you may consider taking to mitigate the vulnerability of your computer system to E-Problems include using firewalls, password protection, and anti-virus programs.

COMPANY WILL USE THE WEBSITE TO SEND PROMOTIONAL MESSAGES, USER INFORMATION, PRESS RELEASES, SERVICE UPDATES, TECHNICAL INFORMATION, AND OTHER INFORMATION.

8. Limitation on Liability

IN NO EVENT SHALL COMPANY, ITS SUPPLIERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, OR LOSS OF USE OF EQUIPMENT, SOFTWARE OR DATA) RELATED TO OR THAT RESULT FROM: (A) YOUR USE OF, OR INABILITY TO USE, THIS WEBSITE OR THE MATERIALS; (B) YOUR RELIANCE ON ANY MATERIALS CONTAINED ON THIS WEBSITE; OR (C) ANY GOODS OR SERVICES ADVERTISED ON, OR LINKED TO, THIS WEBSITE, EVEN IF COMPANY OR ITS SUPPLIERS OR AFFILIATES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, ACTED NEGLIGENTLY OR IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

9. Restriction, Suspension and Termination

If Company determines, in its sole discretion, that you are using or have used any portion of the Website or the Materials in a manner inconsistent with any of these Terms of Service, Company shall have the right to take appropriate action without prior notice to you including, without limitation, the following: (a) remove any material you have submitted; (b) limit, restrict, suspend and/or terminate your access to, and use of, the Website, Materials or any portion thereof; and (c) seek any remedies available at law or in equity.

10. Privacy Policy

Any collection or use of personally identifiable information collected from you via this Website is governed by our Privacy Policy, located at <https://account.emodal.com/Home/Privacystatement>. which forms a part of these Terms of Service.

11. Indemnification

You shall indemnify and hold Company, its suppliers and affiliates, and each of their respective directors, officers, employees, owners, members, agents, representatives, licensors, licensees, and investors (collectively, the "Indemnified Parties"), harmless from and against any and all claims, legal actions, demands, controversies, disputes, liabilities, losses, expenses, costs and/or damages including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") arising out of or related to any breach by you of any of the Terms of Service or otherwise relating or arising from your access or use of the Website or the Materials. You shall cooperate, at your expense, as reasonably requested by Company in the defense of all Claims.

12. Entire Agreement and Amendment

These Terms of Service, including the Privacy Policy, constitute the entire agreement between Company and you with respect to the subject matter hereof. Any and all portions of the Terms of Service may be modified, amended, changed, added, or removed at any time and from time to time at the sole discretion of the Company.

13. Waiver

No failure or delay on the part of Company to exercise any right, power or remedy under these Terms of Service shall operate as a waiver; nor shall any single or partial exercise by Company of any right, power or remedy under these Terms of Service preclude any other or further exercise of any right, power or remedy.

14. Severability

The provisions of these Terms of Service are intended to be severable. If for any reason any provision of these Terms of Service is held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

15. Governing Law, Venue and Dispute Resolution

These Terms of Service shall be interpreted, construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the state of California, excluding its choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods. All claims or actions arising out of or related to these Terms of Service and your use of this

Website and the Materials shall be settled by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Such arbitration shall be held in Los Angeles County, California before one arbitrator selected by mutual agreement of the parties or, absent such agreement, in accordance with the AAA rules. The arbitrator may not award any punitive damages. Any award of the arbitrator may be enforced in any court of competent jurisdiction. NOTWITHSTANDING THE DISPUTE RESOLUTION REQUIREMENTS SET FORTH ABOVE, FOR ANY INJUNCTIVE RELIEF RELATING TO YOUR ACCESS TO, OR USE OF, THIS WEBSITE YOU IRREVOCABLY AND UNCONDITIONALLY CONSENT TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN LOS ANGELES COUNTY, CALIFORNIA, UNITED STATES OF AMERICA.

- 16. Customer Support.** For eModalSubscribers, phone and webform support is included in your Subscription Fee. Phone support is available from 7AM EST (Eastern Standard Time) to 5PM PST (Pacific Standard time), Monday through Friday, with reduced hours during holidays in the US. We accept email and webform support questions 24 Hours per Day x 7 Days per Week. Email questions can be submitted through helpdesk@eModal.com. Email responses are provided during phone support hours only. We attempt to respond to webform support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

Additional Terms for eModal Data Services

eModal Data Services Terms of Service (the “**EDS TOS**”) relates the specific terms and conditions that govern your access to and use of the content exchanged using eModal Data Services. These EDSTOS are effective when you click an “I accept” button or check box presented with these terms at the time of registration (the “**Effective Date**”). You represent that you have full right, power and authority to Agree to these EDS TOS.

“**eModal Data Services or EDS**” means the eModal Data subscription and related services (including associated APIs).

“**Portal**” means the eModal platform.

“**API**” means application programming interface.

“**eModal Community**” means the community of marine ports, container terminals, and related supply chain vendors who use and access the Portal.

“**Content**” means any data or databases, in any form (including electronic).

- 1. Description of the eModal Data Services.** The eModal Data Services (“EDS”) enables automated, digital collaboration between key supply chain stakeholders within a Port Community (the “**Purpose**”). By integrating and processing the Content you provide to us through the EDS (“**Company Content**”) with Content provided by other members of the eModal Community, you acknowledge and agree to enabling other members of the eModal Community to exchange Content provided by other users, including you. You agree to comply with these EDS TOS and all laws, rules and regulations applicable to your use of the eModal Data Services.

2. **Changes.** We may change or discontinue any or all of the EDS or change or remove functionality of any or all of the EDS from time to time. We will notify you of any material change to or discontinuation of the EDS. We may change or discontinue any APIs for the EDS from time to time. For any discontinuation of or material change to an API for the EDS, we will reasonably endeavor to continue supporting the previous version of such API for 3 months after the change or discontinuation.
3. **Term and Termination.** EDS can commence on the Effective Date of your Commercial contract or "Service Order" and continues on a monthly basis until terminated in accordance with the below.
 - **Termination for Convenience.** You may terminate the EDS for any reason by providing us at least 30 days' written notice. We may terminate the EDS for any reason by providing you at least 60 days' written notice.
 - **Effect of Termination.** Upon termination of the EDS, all your rights under these EDS TOS immediately terminate, you will remain responsible for all fees and charges you have incurred through the date of termination.
4. **Service Orders; Implementation Services.** We will provide the EDS to you in accordance with the EDS TOS and any terms and conditions as we may from time to time agree and specify in services orders ("**Service Orders**") signed by the Parties. The Service Order will describe the fees and any other terms specific to the applicable EDS. If requested by you, we will configure and implement the EDS as described in the applicable Service Order contract.
5. **Use and Disclosure of Company Content:** We may use, collect, compile, create derivative works of and disclose Company Content for our internal purposes (including analysis and reporting), to facilitate the Purpose, and to improve the EDS, to the extent permitted by applicable law. We may disclose the Company Content to our affiliates, agents and contractors provided that such affiliates, agents and contractors are subject to substantially the same terms and conditions as contained in this EDS TOS. We may also disclose the Company Content on an aggregate and anonymous basis to any third party. We will treat your contact information (including personal information of Company representatives) in accordance with our Privacy Policy. For the purposes of this Section, "**aggregate**" means data that is combined with data from other parties and "**anonymous**" means data that does not identify and does not permit identification of you, or any user.
6. **Warranties.** You represent and warrant to us that you have full authority to provide the Company Content in the manner described in the EDS TOS, and that you have obtained all necessary consents, authorizations, licenses and all other rights necessary to grant the licenses contained in this EDS TOS; (ii) the Company Content and all other material provided under this EDS TOS will not infringe, violate or misappropriate any patent, copyright, trademark, tradename, trade secret, right of publicity or privacy or other intellectual property or proprietary right of any third party; (iii) the Company Content is accurate; (iv) the collection, organization, processing, storage, transmission, dissemination, adaptation or alteration, combination, retrieval, use and licensing by Company of any part of the Company Content has been conducted in compliance with all applicable laws and regulations.

7. **Payment Procedures.** Payment is due (i) on a monthly basis in arrears for the EDS service fees and (ii) upon performance of any implementation of the EDS (if applicable) as described in the applicable Service Order.
8. **Misuse.** You may use the Content provided by EDS (“**EDS Content**”) for your internal use and for your transportation, logistics or supply chain business operations (collectively, “**Permitted Use**”) in accordance with the Service Order. Without limitation, Company may not (a) resell or redistribute the EDS Content (b) provide access to the EDS Content to any third party, or (c) use or monitor the EDS Content or EDS’s availability, performance or functionality for any competitive purpose.
9. **Limits.** Advent reserves the right to restrict, suspend, or otherwise limit your use of the EDS if Advent believes that you may be in breach of these EDS TOS (including Sections 6, 7 or 8. If we suspend your right to access the EDS Content or use any part of the EDS, you will remain responsible for all fees and charges you incur during the period of suspension.

eModal SLA & Service Credit Policy

1. **Service Level Commitment.** During the Subscription Term for which eModal has agreed to provide an eModal Service/Subscription to you, we will use commercially reasonable efforts to provide a Monthly Uptime Percentage to you of at least 99.5% (“**Service Level Commitment**”).
2. **Service Credits.** If we confirm there is a failure to meet a Service Level Commitment in a particular calendar month and you make a request for service credit within fifteen (15) days after the end of such calendar month, you will be entitled to a credit based on the monthly fees invoiced for the affected Service/Subscription in the month experiencing such failure consistent with the Section 6 below (“**Service Credit**”). To receive a Service Credit, you must submit a ticket at helpdesk@emodal.com with all fields fully and accurately completed and provide any other reasonably requested information or documentation. Our monitoring and logging infrastructure and Root Cause Analysis (RCA Reports) are the source of truth for determining Monthly Uptime Percentage, errors and whether we have met the Service Level Commitment. The aggregate maximum Service Credits applied to an invoice will not exceed 100% of the amount invoiced for the affected Service/Subscription in that invoice billing period. We reserve the right to deny a Service Credit if you do not qualify for one.
3. **Exclusions.** You will not be entitled to a Service Credit if you are in breach of the Terms. The Service Level Commitment will not include unavailability to the extent due to: (a) your use of the Service/Subscription in a manner not authorized in the Terms or not in accordance with the applicable Documentation; (b) force majeure events or other factors outside of our reasonable control, including, without limitation, Internet access or related problems; (c) your equipment, software, network connections or other infrastructure; (d) Your Data or Your Materials whether provided by you or a third party including but not limited to Terminal Operating System, Gate System, Truck Management System; (e) third-party equipment, apps, add-ons, software or

technology; (f) routine scheduled maintenance or reasonable emergency maintenance; or (g) additional, module specific limitations as described below.

4. **Exclusive Remedies.** Unless stated in your Master Services Agreement or Service Order, Service Credits are your sole and exclusive remedy, and our sole and exclusive liability, for our failure to meet the Service Level Commitment.

5. **Definitions.** All capitalized terms not otherwise defined are as set forth in the eModal Terms of Service (“Terms”).
 - **“Monthly Uptime Percentage”** means 100% minus the percentage of Downtime minutes out of the total minutes, less any scheduled maintenance activity, in the relevant calendar month.
 - **“Downtime”** occurs when eModal is not accessible and there is a High or Severe Business Impact which is affecting multiple users. See additional description by module below.
 - **“Applicable Monthly Service Fees”** means the total fees actually paid by you for a Service that are applied to the month in which a Service Credit is owed.
 - **“Incident”** means (i) any single event, or (ii) any set of events, that result in an interruption of production service.
 - **“Scheduled Downtime”** means periods of Downtime related to network, hardware, or Service maintenance or upgrades. We will publish notice or notify you prior to the commencement of such Downtime and it will generally be on the weekend or after business hours.
 - **“Service Level”** means the performance metric(s) set forth in this SLA that we agree to meet in the delivery of the Services/Subscription.

Service Specific Terms

PreGate & Appointments

Downtime: Any period of time when users are unable to make, edit or cancel appointments or pre-arrivals, create, edit or configure slot schedule, or when Terminal is not receiving appointment updates from eModal.

Service Level Commitment:

Monthly Uptime Percentage	Service Credit
< 99.5%	10%
< 99%	15%
<97%	25%
<95%	50%
<90%	100%

Additional Limitations: N/A

Fee Payment

Downtime: Any period of time when end users are unable to pay fees, add fees to cart and complete checkout process, or when EDI subsystem (affecting fee payment confirmation messaging) is inaccessible.

Service Level Commitment:

Monthly Uptime Percentage	Service Credit
< 99.5%	10%
< 99%	15%

<97%	25%
<95%	50%
<90%	100%

Additional Limitations: Service Credits for Fee Payment only apply to the service fees payable to eModal. eModal is not responsible for additional fees that are incurred by a user that are levied by a third party. eModal does not have the authority to waive fees or extend last free day on behalf of any Terminal.

TruckerCheck / DTR

Downtime: Any period of time when end users are unable to add and update truck and driver information into eModal, or when Terminal is unable to access and retrieve file update due to availability of the eModal service.

Service Level Commitment:

Monthly Uptime Percentage	Service Credit
< 99.5%	5%
< 99%	10%
<97%	15%
<95%	25%
<90%	50%

Additional Limitations: N/A