

eModal Data Services Terms of Service

This **eModal Data Services Terms of Service** (the “**EDS TOS**”) contains the terms and conditions that govern your access to and use of the content exchanged using the eModal Data Services. These EDS TOS 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.

These EDS TOS are made by and between Advent Intermodal Solutions, LLC (“**Advent**”, “**we**”, “**us**” or “**our**”) and _____ (“**you**”, the “**Company**” or “**your**”). You and we are sometimes each referred to generically herein as a “**Party**” and collectively as the “**Parties**.”

“**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.** The EDS commence on the Effective Date and continue on a monthly basis until terminated in accordance with this Section.
 - a. **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.
 - b. **Termination for Cause.** Either party may terminate the EDS for cause if the other Party is in material breach of the EDS TOS and such breach remains uncured for a period of 30 days following receipt of notice by the other Party. We may also terminate the EDS immediately upon notice to you for cause if we have the right to limit or suspend the EDS under Sections 7 and 8.
 - c. **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.
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.
10. **Website Terms of Use & Privacy Policy.** All use of the Portal shall be in accordance with the Terms of Use and Privacy Policy available at : www.emodalpro.com/home/termsfuse and www.emodalpro.com/home/

privacystatement] (the “Terms of Use”) which are incorporated by reference herein. In the event of a conflict between the EDS TOS and the Terms of Use, the EDS TOS shall govern.

11. **Customer Support.** Standard phone and webform support is included in the service fees set forth in the Service Order. Email questions can be submitted through helpdesk@emoddalpro.com. Phone support is available by calling the helpdesk during helpdesk hours at 866-758-3838.
12. **Marketing and Promotion.** Advent may use your name and logo to refer to you as a customer on Advent websites and marketing materials.
13. **Miscellaneous**
 - a. **Disclaimer of Warranties.** TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, THIS PORTAL AND THE EMODAL DATA SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. ADVENT AND ITS AFFILIATES 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.
 - b. **Limitation of Liability.** IN NO EVENT SHALL ADVENT, ITS 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) COMPANY’S USE OF, OR INABILITY TO USE, THE EMODAL DATA SERVICES; (B) COMPANY’S RELIANCE ON ANY MATERIALS OR INFORMATION OBTAINED FROM THE EMODAL DATA SERVICES; EVEN IF ADVENT OR ITS AFFILIATES ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES, ACTED NEGLIGENTLY OR IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. ADVENT’S AGGREGATE SHALL NOT EXCEED THE SUM OF FEES ACTUALLY PAID BY COMPANY.
 - c. **Indemnification.** Company shall indemnify and hold Advent, its 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 or otherwise relating or arising from Company’s access or use of the EDS. Company shall cooperate, at Company’s expense, as reasonably requested by Advent in the defense of all Claims.
 - d. **Entire Agreement; Amendment.** This EDS TOS (including any Service Orders entered hereto), including the EDS TOS and Privacy Policy, constitute the entire agreement between the parties with respect to the subject matter hereof. Except for the EDS TOSs and the Privacy Policy, this EDS TOS may only be modified by mutual written agreement.
 - e. **Waiver.** No failure or delay on the part of either Party to exercise any right, power or remedy under this EDS TOS shall operate as a waiver; nor shall any single or partial exercise by either Party of any right, power or remedy preclude any other or further exercise of any right, power or remedy.

- f. **Severability.** The provisions of this EDS TOS are intended to be severable. If for any reason any provision of this EDS TOS 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.

Governing Law, Venue and Dispute Resolution. This EDS TOS 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 EDS TOS 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 COMPANY’S ACCESS TO, OR USE OF, THE EMODAL SERVICES, COMPANY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN LOS ANGELES COUNTY, CALIFORNIA, UNITED STATES OF AMERICA.

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the Effective Date set forth above.

Advent Intermodal Solutions, LLC

By: _____

By: _____

Name: Jonathan Coslet

Name: _____

Title: Chief Operational Officer

Title: _____

Date: _____

Date: _____