

BNSF Railway Privacy Statement

BNSF is firmly committed to protecting your privacy and data while visiting our Internet site and using our services. The statement below provides details on the information we collect, our use of that information and our data security practices. Information collected by BNSF is used only for internal business purposes. BNSF does not, nor do we plan to, sell any information collected through our website. Further, BNSF does not plan to divulge information to any party other than BNSF affiliates, service providers and other third parties we use to help run our business.

This privacy statement explains what Personal Information we collect, what sources we used to collect it, how we use it, and how we disclose the information.

Information Collected

BNSF collects information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household ("Personal Information"). Personal Information does not include publicly available information or information that is deidentified or aggregate consumer information.

BNSF may have collected the following categories of Personal Information within the last twelve months:

Category	Examples	Collected
Identifiers	A real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers.	Yes
Categories of personal information described in the California Civ. Code § 1798.80(e)	<p>A name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.</p> <p>Some personal information included in this category may overlap with other categories.</p>	Yes
Characteristics of protected classifications under California or federal law	Age (40 years or older), race, color, ancestry, national origin, citizenship, religion or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, genetic information (including familial genetic information).	No
Commercial information	Records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.	Yes
Biometric information	Genetic, physiological, behavioral, and biological characteristics, or activity patterns used to extract a template or other identifier or identifying information, such as, fingerprints, faceprints, and voiceprints or voice recordings, iris or retina scans, keystroke, gait, or other physical patterns, and sleep, health, or exercise data.	Yes
Internet or other electronic network activity information	Browsing history, search history, and information regarding a consumer's interaction with an internet website, application, or advertisement.	Yes
Geolocation data	Personal physical location or movements.	Yes
Sensory data	Audio, electronic, visual, thermal, olfactory, or similar information.	No
Professional or employment-related information	Current or past job history or performance evaluations.	No
Non-public education information as defined in the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99)	Education records directly related to a student maintained by an educational institution or party acting on its behalf, such as grades, transcripts, class lists, student schedules, student identification codes, student financial information, or student disciplinary records.	No
Inferences drawn from other personal information	Profile reflecting a person's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.	No
Sensitive Personal Information	<p>Personal Information that reveals:</p> <ul style="list-style-type: none"> ▪ a consumer's social security, driver's license, state identification card, or passport number ▪ a consumer's account login, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account. ▪ a consumer's precise geolocation ▪ a consumer's racial or ethnic origin, religious or philosophical beliefs or union membership ▪ the contents of a consumer's mail, email, and text messages unless the business is the intended recipient of the communication ▪ a consumer's genetic data ▪ the processing of biometric information for the purpose of uniquely identifying a consumer ▪ personal information collected and analyzed concerning a consumer's health ▪ personal information collected and analyzed concerning a consumer's sex life or sexual orientation 	Yes

Use of Personal Information

In general, you can visit BNSF on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect visitor domain names, not e-mail addresses or other personally identifying information. This information is compiled to measure the number of visits, average time spent on the site, pages viewed, and similar information. We use this information to measure the use of our site and to improve the user experience.

BNSF may also collect your location information, including your current latitude and longitude, when you access our website. We collect this information to personalize the content and functionality of the site and to help us understand how and where visitors are using our content and applications.

If you register for an account with the BNSF Customer Portal or enter into a separate agreement with us, BNSF may also collect, store, and use your biometric data to verify your identity and to keep an accurate record of your interactions with BNSF. The types of biometric data we may collect include, but are not limited to, a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Any biometric data collected, stored, or used by BNSF shall be retained for a period of up to one year of your last interaction with the particular product or service with which you registered your information, at which point BNSF shall permanently destroy the biometric data in accordance with BNSF guidelines.

Additional information may be requested and collected to the extent you use our website, online tools, or otherwise interact with us as a part of your business relationship with BNSF. This information is necessary for BNSF to provide the services that you request and is used to respond to your inquiry, process your request, or validate authorization to grant access to specific account information. The amount of personal information you disclose to BNSF is at your discretion. The types of information we may collect is described below.

BNSF will only use your Personal Information as the law allows. BNSF may use or disclose the Personal Information we collect for one or more of the following purposes:

- Performing transactions and responding to your requests, including providing customer service and addressing inquiries.
- Making our Websites more intuitive and easy to use.
- Improving our services, including performing analysis and research and development.
- Protecting the security and effective functioning of our Websites and information technology systems.
- Providing relevant communications about BNSF services, to the extent we have obtained your consent.
- Addressing our compliance and legal obligations.
- Screening and selecting applicants for employment.
- Employment purposes (for example, benefits, administration and payroll).

BNSF will not collect additional categories of Personal Information or use the Personal Information we collected for materially different, unrelated, or incompatible purposes without providing you notice.

Cookies

Some pages within www.bnsf.com use cookies so we can better serve you when you return to our site. You can set your browser to notify you when you receive a cookie, giving you the opportunity to decide whether to accept it or not.

Data Security

To prevent unauthorized access, maintain data accuracy, and ensure the correct use of Personal Information, we have put in place appropriate physical, electronic and managerial procedures to safeguard and secure the information we collect on our website, online tools, or other methods as a part of your business relationship with BNSF.

Selling or Sharing Personal Information

BNSF does not sell or share Personal Information for monetary value or for cross-context behavioral advertising. In order to perform a business purpose, BNSF may provide Personal Information collected to our affiliates, services providers, and other third parties we use to help run our business—such as vendors or website hosts.

When BNSF discloses Personal Information to an affiliate, service provider or other third party for a business purpose, we enter into a contract that describes the purpose and requires the recipient to both keep that Personal Information confidential and not use it for any purpose except for performing the contract. The service providers do not further collect, sell, or use the Personal Information except as necessary to perform the business purpose.

Retention of Personal Information

BNSF retains your Personal Information for as long as is necessary for the purposes described in this privacy statement, in accordance with applicable laws.

Your Rights

You may have rights under certain privacy and data protection laws such as the California Privacy Rights Act of 2020 (CPRA). BNSF is committed to protecting your data privacy and has provided the following information about your rights and how to

exercise your rights:

Right to Know

You have the right to know:

- The categories of Personal Information we have collected about you;
- The categories of sources from which the Personal Information is collected;
- Our business or commercial purpose for collecting or selling Personal Information, if any;
- The categories of third parties with whom we share Personal Information, if any; and
- The specific pieces of Personal Information we have collected about you.

Please note that we are not required to:

- Retain any Personal Information about you that was collected for a single one-time transaction if, in the ordinary course of business, that information about you is not retained;
- Reidentify or otherwise link any data that, in the ordinary course of business, is not maintained in a manner that would be considered Personal Information; or
- Provide the Personal Information to you more than twice in a 12-month period.

In connection with any Personal Information we may sell or disclose to a third party for a business purpose, you have the right to know:

- The categories of Personal Information about you that we sold or disclosed and the categories of third parties to whom the Personal Information was sold or disclosed; and
- The categories of Personal Information that we sold or disclosed about you for a business purpose.

Right to Delete

Subject to certain exceptions set out below, on receipt of a verifiable request from you, we will:

- Delete your Personal Information from our records; and
- Direct any service providers to delete your Personal Information from their records.

Please note that we may not delete your Personal Information if it is necessary to:

- Complete the transaction for which the Personal Information was collected, provide a service requested by you, or reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform a contract between you and us;
- Detect security incidents, protect against malicious, deceptive, fraudulent, or illegal activity; or prosecute those responsible for that activity;
- Debug to identify and repair errors that impair existing intended functionality;
- Exercise free speech, ensure the right of another consumer to exercise his or her right of free speech, or exercise another right provided for by law;
- Comply with the California Electronic Communications Privacy Act or other similar laws;
- Engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws, when our deletion of the information is likely to render impossible or seriously impair the achievement of such research, provided we have obtained your informed consent;
- Enable solely internal uses that are reasonably aligned with your expectations based on your relationship with us;
- Comply with an existing legal obligation; or
- Otherwise use your Personal Information, internally, in a lawful manner that is compatible with the context in which you provided the information.

Right to Correct

You have the right to request that inaccurate Personal Information collected by BNSF be corrected.

Right to Limit

Subject to certain exceptions, you have the right to request that BNSF limit the use of your Sensitive Personal Information. BNSF does not collect Sensitive Personal Information for the purpose of inferring characteristics about you.

Right to Non-Discrimination

You have the right to not be discriminated against by us because you exercised any of your rights under the CPRA or other laws. This means we cannot, based solely upon your elections regarding Personal Information:

- Deny goods or services to you;

- Charge different prices or rates for goods or services, including through the use of discounts or other benefits or imposing penalties;
- Provide a different level or quality of goods or services to you; or
- Suggest that you will receive a different price or rate for goods or services or a different level or quality of goods or services.

Please note that Personal Information may be required as necessary to provide a rate and perform transportation or other services.

How to Contact Us

If you would like to exercise any of your rights as described in this Privacy Statement, please:

- Call us, toll-free, at 1-800-388-
- 0120; or Email us at
DataPrivacy@BNSF.com.

Please note that you may only make a data access or data portability disclosure request twice within a 12-month period. Response Timing

When you make a request exercising your CPRA rights, BNSF will confirm receipt of your request within 10 business days and respond to a verifiable request within 45 or 90 days.

Verifying Your Identity

If you choose to contact us directly by email or phone, you will need to provide us with:

- Enough information to identify you including:
 - Your full name,
 - Address,
 - Email,
 - Phone number, and
 - Customer or matter reference number (if applicable).
- Proof of your identity (e.g., a copy of your driver's license or passport and a recent utility or credit card bill or BNSF transaction information); and
- A description of what right you want to exercise (such as disclosure or deletion rights) and the information to which your request relates.

We are not obligated to make a data access or data portability disclosure if we cannot verify that the person making the request is the person about whom we collected information, or is someone authorized to act on such person's behalf.

Any Personal Information we collect from you to verify your identity in connection with your request will be used solely for the purposes of verification.

Changes to this Privacy Statement

We may update this Privacy Statement from time to time as our business (including privacy and security practices) changes, or as required by law.

The effective date of this Privacy Statement is provided below, and we encourage you to visit our site periodically to stay informed about our privacy and security practices.

We will post the most current version of our Privacy Statement on our site and ask for your consent to the changes if legally required.

Third Party Links

We also link to a number of third-party external sites. The inclusion of any link does not imply our endorsement of the external site company, its website, or the products and services it promotes or sells. We are not responsible or liable for the independent privacy policies of these third-party sites. You should consult the privacy policies at these sites to determine how your information may be used.

Effective Date: December 20, 2019



Terms of Service

Last Modified: May 26, 2024

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 (“Advent eModal”, “Company”, “us”, or “we”) may modify these Terms of Service (these “Terms”) 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 for any illegal purpose or 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, or violate any right of a third party, including collecting personal information about another user or third party without consent.
- 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 including its security related features.
- 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.
- Use the Service to perform any fraudulent activity including impersonating any person or entity, claim a false affiliation or identity, or access any other user account without permission.
- Otherwise attempt to interfere with the proper working of the Website including its security related features.
- Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Service, any software, documentation, or data related to the Service, or any software contained on or accessed through the Website.
- Copy, modify, translate, save or create derivative works based on the Service (except to the extent expressly permitted by Company or authorized within the Service).
- Use the Service for timesharing or service bureau purposes or otherwise for the benefit of a third party.
- Use the Service to sell or provide products and services that: (i) are illegal, (ii) infringe intellectual property rights, (iii) are unfair, predatory, or deceptive, (iv) include adult content.
- Assist or permit any person to engage in any of the foregoing prohibited acts.

3. **Conditions of Use**

To access most of the features of the Service, you must register for an account with Company and/or our service providers. When you register for an account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact information. You agree that the information you provide to us is accurate, complete, and not misleading, and that you will keep it accurate and up to date at all times. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you should immediately notify us as set forth in these Terms.

In connection with each transaction and proposed transaction through access or use of any of the Website or any Website-related services (together, "Transactions"), 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 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 to each Transaction (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®", "Envio 360", "Advent eModal" 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 or services 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

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY, ITS SUPPLIERS AND AFFILIATES, ITS THIRD-PARTY SERVICE PROVIDERS (INCLUDING ITS PAYMENT PROCESSORS) 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; (C) ANY GOODS OR SERVICES ADVERTISED ON, OR LINKED TO, THIS WEBSITE; (D) ANY SUBJECT MATTER OF THESE TERMS RELATED THERETO, UNDER ANY WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY STATUTE OR OTHER THEORY, EVEN IF COMPANY OR ITS SUPPLIERS OR AFFILIATES OR ITS THIRD-PARTY SERVICE PROVIDERS 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 is incorporated by this reference into these Terms of Service.

11. Indemnification

You shall indemnify and hold Company, its suppliers and affiliates, and each of their respective shareholders, directors, officers, managers, employees, consultants, 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 (a) any breach by you of any portion of these Terms of Service, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation of Service, (b) your data, content, or other materials provided by you to any third party, (c) the infringement, misappropriation or violation of any patent, copyright, trademark or other intellectual property rights or trade secrets, (d) any contractual or other relationship between you and any other third party, (e) your provision of inaccurate or incomplete information, (f) fees, fines, refunds, returns, chargebacks or other liabilities imposed by any payment processor or merchant, (g) your failure to timely file any tax information return or report, (h) any taxes, fees, penalties, fines, or losses, imposed on or incurred by any of the Indemnified Parties resulting from your use of the Services or any third party services, or anyone using your account on the Service or any applicable third party service, (j) any transactions, charges, disputes, refunds, reversals, claims and any associated fines, including but not limited to charges subject to and/or fines imposed under the U.S. Shipping Act of 1984 as amended, or (h) 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. Company will promptly notify you of any such Claim subject to indemnification (provided, however, that the failure to deliver such notice shall not relieve you of your indemnification obligations hereunder, except to the extent of any material prejudice as a direct result of such failure) and Company will give reasonable assistance, at your sole cost and expense. Company reserves the right to assume sole control over defense and settlement of any matter subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims. You shall not enter into any settlement or compromise of any such claim in the event such settlement or compromise imposes any liability or obligation on any Indemnified Party without the prior written consent of the applicable Indemnified Party. No Indemnified Party will not be responsible for any settlement it does not approve in writing.

12. Entire Agreement and Amendment; Electronic Communications

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. By using the Service, you consent to receiving certain electronic communications from us. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing. You further consent to executing electronic signatures in connection with the Service and any Transactions and agree that any such electronic signatures will satisfy any legal requirements.

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 eModal Subscribers, 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 webform support questions 24 Hours per Day x 7 Days per Week. Questions can be submitted at <https://emodal.zendesk.com/hc/en-us/requests/new>. 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.

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 <https://emodal.zendesk.com/hc/en-us/requests/new> 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; (g) additional, module specific limitations as described below; or (h) breach of Section 2 of this agreement by any eModal user in a manner that impacts the Service Level Commitment.
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 net processing service fees payable to eModal by an eModal Seller customer using the Service to collect fees and for which eModal provides payment reconciliation and deposit (the Seller vs. the Payor). eModal is not responsible for any revenue loss related to uncollectable fees or monies due to the Seller by the Payor. Net Processing Service Fees are defined as the total Platform Processing Fee assessed by eModal less any related third- party transactional or bank processing charges. 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 Marine Terminal, Ocean Carrier or other Party.

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