

TERMS OF USE FOR COMMTREX EXCHANGE and COMMTREX WEBSITE

Commtrex, Inc. (referred to in this document as “**Commtrex**,” “**we**” or “**us**”) provides website features to the applicable customer of Commtrex (referred to in this document as “**you**”) subject to the following terms of use (“**Terms of Use**”) and an Exchange Agreement between you and us, if any (“**Exchange Agreement**”). These Terms of Use govern your access to the Commtrex Exchange found at exchange.commtrex.com and to Commtrex’s corporate website found at www.commtrex.com (collectively referred to herein as the “**Site**”), including any content, functionality and services offered through the Site and any web pages, interactive features, applications, widgets, blogs, social network pages or other online or wireless offerings that post a link to the Site that are administered or controlled by Commtrex. PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE YOU START USE OF THE SITE. These Terms of Use contain important information regarding, among other things, your use of any text, graphics, documents, images, design elements, video or audio content as well as logos, trademarks or registered trademarks, copyrighted elements, service marks or registered service marks, trade dress or other materials (collectively referred to as “**Content**”) that appear on this Site. By using the Site (whether as a guest or a registered user) you accept and agree to these Terms of Use and our Privacy Policy <http://www.commtrex.com/privacy> (the “**Privacy Policy**”), and any other policies, agreements, and terms and conditions contained on this Site. You agree to be bound by all terms and conditions during your use, regardless of any actions that may allow you to bypass viewing any terms or conditions. If you do not want to agree to these Terms of Use or our Privacy Policy, you must not access the Site.

1. Accessing the Site.

To access the Site or certain parts of it, you may be asked to provide certain registration details or other information. You agree that all information provided on the Site is correct, current and complete. You agree that all information provided to register with the Site, including but not limited to information provided for the creation of an account, is governed by the Privacy Policy, which is available on the Site, and you consent to all actions Commtrex takes with respect to your information consistent with the Privacy Policy.

You agree you are responsible for maintaining the confidentiality of your account and any applicable usernames and passwords of your authorized representatives and for restricting access to your computer(s) and you agree to accept responsibility for all activities that occur under your account or those user names or passwords. You also acknowledge that your account is personal to you and agree not to provide any other person other than your authorized representatives with access to this Site or portions of it using user names, passwords, or other security information provided to your authorized representatives. You further agree to notify Commtrex immediately of any unauthorized access to or use of such user names or passwords or any other breach of security.

Commtrex retains the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion and for any reason, including if, in our opinion, you have violated any provision of these Terms of Use.

Commtrex also reserves the right to change, amend, and modify the Site, and any service or materials we provide on this Site, in our sole discretion without notice. We will not be liable for any reason if all or any part of the Site is unavailable at any time or for any period of time. For time to time, we may also restrict access to some parts of the Site, or the entire Site, to users, including registered users.

2. No Unlawful or Prohibited Use.

Any use or attempted use of the Site (i) for any unlawful, unauthorized, fraudulent or malicious purpose; (ii) that could damage, disable, overburden, or impair any server, or the network(s) connected to any server; (iii) that could interfere with any other party's use and enjoyment of the Site; (iv) to gain unauthorized access to any other accounts, computer systems or networks connected to any server or systems through hacking, password mining or any other means; (v) to access systems, data or information not intended by Site to be made accessible to a user; (vi) to attempt to obtain any materials or information through any means not intentionally made available by us; or (vii) any use other than the purpose for which it was intended, is prohibited.

In addition, you and each of your authorized representatives agree that, in connection with your use of the Site, you will not:

- a. Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Site, the server(s) on which the Site is stored, or any server, computer or database connected to the Site;
- b. Attack the Site via a denial-of-service attack or a distributed denial-of-service attack;
- c. Upload or transmit any message, information, data, text, software or images, or other content that is unlawful, immoral, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable, or that may invade another's right of privacy or publicity;
- d. Create a false identity for the purpose of misleading others or impersonate any person or entity, including, without limitation, any representative of Commtrex, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e. Upload or transmit any material that you do not have a right to reproduce, display or transmit under any law or under contractual or fiduciary relationships (such as nondisclosure agreements);
- f. Upload files that contain viruses, Trojan horses, worms, logic or time bombs, cancel-bots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another or which is malicious or technologically harmful;
- g. Delete any author attributions, legal notices or proprietary designations or labels that you upload to any communication feature;

- h. Use of any of the Site's communication features in a manner that adversely affects the availability of its resources to other users (e.g., excessive shouting, use of all caps, or flooding continuous posting of repetitive text);
- i. Upload or transmit any unsolicited advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes" or any other form of solicitation, commercial or otherwise;
- j. Violate any applicable local, state, national or international law or regulations (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);
- k. Upload or transmit any material that infringes any patent, trademark, service mark, trade secret, copyright or other proprietary rights of any party;
- l. Delete or revise any material posted by any other person or entity;
- m. Probe, scan, test the vulnerability of or breach the authentication measures of, the Site or any related networks or systems;
- n. Register, subscribe, attempt to register, attempt to subscribe, unsubscribe, or attempt to unsubscribe, any party for any products or services if you are not expressly authorized by such party to do so;
- o. Harvest or otherwise collect information about others, including e-mail addresses;
or
- p. Use any robot, spider, scraper, or other automated or manual means to access the Site, or copy any content or information on the Site.

You agree with Commtrex that, so long as you have access to the Site:

- a. You will deliver to Commtrex or a to third party, as necessary: (i) any forms, documents or certificates relating to taxation necessary for any transaction agreed to using the Exchange (each, a "**Transaction**") and; (ii) any other documents necessary for a Transaction;
- b. You will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by you with respect to your use of the Exchange and any Transaction, and you will use all reasonable efforts to obtain any that may become necessary in the future; and
- c. You will comply in all material respects with all applicable laws and orders to which you may be subject.

3. Use of the Exchange; Transactions; Fees; Terms of Payment.

- a. This Section 3 shall apply in the event that you have not executed an Exchange Agreement with Commtrex that is in full force and effect as of any date on which you access the Site. To the extent that you have executed an Exchange Agreement with Commtrex, and such Exchange Agreement remains in full force and effect as of any date on which you access the Site, the terms and conditions set forth in that Exchange Agreement shall supersede this Section 3.
- b. You acknowledge and agree that these Terms of Use govern your access to and use of Commtrex's electronic platform, the Commtrex Exchange (the "**Exchange**"), accessible at [www.https://exchange.commtrex.com](https://exchange.commtrex.com), including any content, functionality and services offered through the Exchange, for the following purposes, as further described below: (i) leasing or subleasing railroad freight cars ("**Rail Assets**") to or from third parties ("**Leasing Transactions**"); (ii) storing Rail Assets for or with third parties ("**Storage Transactions**"); and (iii) selling or purchasing Rail Assets to or from third parties ("**Buy-Sell Transactions**"). Leasing Transactions, Storage Transactions, and Buy-Sell Transactions may be referred to herein individually as a "**Transaction**" or collectively as "**Transactions.**"
- c. You further understand and agree that: (i) all information you provide and all actions you take in connection with the Exchange will be honest and forthright, and that you will be solely responsible for the accuracy of any information you make available in a Listing or Location (including any contact information with respect thereto); (ii) you will act in good faith; (iii) you will be bound by any agreements entered into with Lessors, Lessees, Storage Providers, Shippers, Buyers, or Sellers, as applicable, using the Exchange; (iv) in using the Exchange, you shall be bound by the Terms of Use and Privacy Policy of the Exchange, as set forth above; and (v) Commtrex in no way guarantees that use of the Exchange will result in a Transaction, or that placing a Listing or Location on the Exchange will result in any customer leads with respect to the lease of Rail Asset storage or otherwise. For the purposes of this Agreement: (A) "**Lessor**" shall mean, with respect to Leasing Transactions, an individual or entity owning or leasing Rail Assets and seeking to lease or sublease one or more of such Rail Assets to one or more third parties on the Exchange; (B) "**Lessee**" shall mean, with respect to Leasing Transactions, individuals or entities seeking to lease or sublease Rail Assets from one or more third parties on the Exchange; (C) "**Storage Provider**" shall mean, with respect to Storage Transactions, an individual or entity owning or leasing property appropriate for the storage of Rail Assets and seeking to use the Exchange to enter into one or more Storage Transactions with Shippers; (D) "**Shipper**" shall mean, with respect to Storage Transactions, an individual or entity seeking to use the Exchange to enter into one or more Storage Transactions with one or more Storage Providers; (E) "**Seller**" shall mean, with respect to Buy-Sell Transactions, an individual or entity owning one or more Rail Assets available for sale on the Exchange; (F) "**Buyer**" shall mean, with respect to Buy-Sell Transactions, an individual or entity seeking to purchase one or more Rail Assets listed on the

Exchange; and (G) “Rail Services Location” shall mean, with respect to Rail Services Transactions, a single location offering Services for Rail Assets.

- d. In the event that, using the Exchange, you act as a Storage Provider and agree to a Storage Transaction with a Shipper, (i) you shall promptly thereafter provide written notice to Commtrex setting forth the term of the applicable Transaction and the number of Rail Assets to be stored for each month of such term, and (ii) for each month during such term when Rail Assets enter storage or leave storage, provide written notice to Commtrex promptly following such month of the number of Rail Assets that entered storage or left storage during such month pursuant to such Transaction. In the event that, using the Exchange, you (x) act as a Lessor and agree to a Leasing Transaction with a Lessee, or (y) act as a Seller, and agree to a Buy-Sell Transaction with a Buyer, you shall promptly thereafter provide written notice to Commtrex setting forth the term of the applicable Transaction and the aggregate value of such Transaction.
- e. All payments under a Transaction shall be made directly between the parties thereto and shall not be made to Commtrex. On a monthly basis with respect to all Transactions effective during the prior month, Commtrex will charge Customer a fee for its services (the “Transaction Fee”) (i) for each Storage Transaction where Customer acts as a Storage Provider, (A) a pre-determined fee (exposed to the Storage Provider at the time offer is made) per Rail Asset stored by Storage Provider per day for each applicable day in such month under the Transaction, (B) a pre-determined dollar amount (exposed to the Storage Provider at the time offer is made) for each Rail Asset that enters storage during such month, and (C) a pre-determined dollar amount (exposed to the Storage Provider at the time offer is made) for each Rail Asset that leaves storage during such month; (ii) for each Leasing Transaction where Customer acts as a Lessor, Commtrex’s prevailing rate for such Transactions during such month; and (iii) for each Buy-Sell Transaction where Customer acts as Seller, Commtrex’s prevailing percentage rate of the total Transaction price payable by the Buyer.
- f. Commtrex may discount any Transaction Fee or Location Fee at its sole discretion.
- g. With respect to any month for which (a) Transaction Fee(s) is due to Commtrex or any month in which you initially list a paid Location, Commtrex shall provide to you, promptly following such month, a detailed written invoice with respect to the Fee(s) due to Commtrex, as applicable in connection with the applicable Transaction(s) or Location(s) (an “**Invoice**”). Payment by you on the Invoice is due in full by the twenty-fifth (25th) calendar day of the month following the month in which you incurred the applicable Fee(s) (the “**Due Date**”) and must be made using one of the payment methods specified in the Invoice. In the event you fail to make payment by the Due Date, Commtrex may charge you simple interest at a monthly rate of one percent (1%) on the overdue amount beginning on the day after the Due Date to the date of actual payment.

4. Recording of Conversations.

You (i) consent to the recording of telephone conversations between the relevant personnel of Commtrex and you in connection with your use of the Site or any potential Transaction using the Site; (ii) agree to obtain any necessary consent of, and give any necessary notice of such recording to, your relevant personnel; and (iii) agree, to the extent permitted by applicable law, that recordings may be submitted in evidence of any Proceedings.

5. Copyright.

All content included on the Site, including but not limited to text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Commtrex or its content suppliers and protected by United States and international copyright laws. The compilation of all content on the Site is the exclusive property of Commtrex and protected by United States and international copyright laws. All software used on the Site is the property of Commtrex or its software suppliers and protected by United States and international copyright laws. Commtrex and its affiliates reserve all ownership rights in all of the intellectual property, including all of Commtrex's content that is the subject of copyright protection, and strictly prohibit you from copying, downloading, uploading, modifying, distributing, transmitting, transferring, reproducing, publishing or creating derivative works of it without prior written consent from Commtrex. You are further prohibited from selling, exploiting or engaging in the sale of any intellectual property contained on this Site.

6. Trademarks.

Commtrex's names, logos, product names and other indicated marks are the trademarks and service marks owned by Commtrex or its affiliates used on the Site are trademarks, registered trademarks or trade dress of Commtrex in the United States and/or other countries. Commtrex's trademarks and trade dress may not be used in connection with any product or service that is not Commtrex's, in any manner that is likely to cause confusion among consumers or in any manner that disparages or discredits Commtrex. All other trademarks not owned by Commtrex that appear on the Site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Commtrex.

7. License and Site Access.

Commtrex grants you a limited license to access and use the Site for business purposes only and not to download (other than page caching) or modify it, or any portion of it, except with express written consent of Commtrex. This license does not include any resale use of the Site or its contents; any collection and use of any commercial listings, descriptions, or prices of railroad freight cars ("**Rail Assets**") or commodities to be delivered using Rail Assets; any derivative use of the Site or its contents; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools. The Site or any portion of the Site may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of Commtrex. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information

(including images, text, page layout, or form) of Commtrex without express written consent. You may not use any meta tags or any other “hidden text” utilizing Commtrex’s name or trademarks without the express written consent of Commtrex. Any unauthorized use terminates the permission or license granted by Commtrex. You are granted a limited, revocable, and nonexclusive right to create a hyperlink to the home page of the Site so long as the link does not portray Commtrex, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. You may not use any Commtrex logo or other proprietary graphic or trademark as part of the link without express written permission.

If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the Site in breach of these Terms of Use, your right to use the Site will cease immediately and you must, at Commtrex’s option, return or destroy any copies of the materials you have made. No right, title or interest in or to the Site or any content on the Site is transferred to you, and all rights not expressly granted are reserved by Commtrex. Any use of the Site not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

8. Site Content.

The Site may include content provided by third parties (“**Third Party Materials**”). All Third Party materials must comply with the Content Standards set out in these Terms of Use and are the responsibility of the person or entity providing such Third Party Materials. Third Party Materials available on the Site do not necessarily reflect or constitute the endorsement of such Third Party Materials by Commtrex.

Commtrex is not responsible, or liable to you or any third party, for the content or accuracy of any information on the Site, and makes no representation regarding the accuracy, completeness, or timeliness of such information. By using the Site, you assume all responsibility for and risk arising from use of and reliance upon any information on the Site. Commtrex disclaims all liability and responsibility arising from any reliance placed upon any information on the Site.

By providing any Third Party Materials to the Site, you grant Commtrex, its affiliates, service providers and respective licensees, successors, and assigns the right to use, reproduce, modify, perform, display, distribute and/or to otherwise disclose to third parties any such material for the purpose of conducting the work of Commtrex and effectively facilitating the exchange of information through the Site and the Commtrex Exchange.

Commtrex has the right to take the following actions with regard to Third Party Materials: (i) refuse to post any Third Party Materials at its sole discretion; (ii) take any action with regard to Third Party Materials that it deems appropriate, including but not limited to instances where Commtrex discovers the Third Party Materials are infringing the intellectual property or other rights of others, violate the Terms of Use or Content Standards, threaten the safety of individuals or the public or create liability for Commtrex; (iii) take appropriate legal action for any illegal or unauthorized use of the Site; (iv) disclose your identity to a party claiming that the Third Party Materials you provided violate that

parties' rights, including but not limited to its intellectual property rights; and (v) terminate or suspend access to all or part of the Site.

Comm-trex also has the right to fully cooperate with any law enforcement authorities or court order requesting or directing use to disclose the identity or other information of anyone posting any materials on or through the Site. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND DEVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF THE INVESTIGATIONS.

9. Content Standards.

These Content Standards apply to Third Party Materials. Third Party Materials must in their entirety comply with all applicable federal, state, local, and international laws and regulations and must be accurate. Third Party Materials must not in any way: (i) violate the legal rights of others or give rise to civil or criminal liability under applicable laws or regulations, (ii) be likely to deceive others, (iii) infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person, (iv) contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful or otherwise objectionable, (v) promote illegal activity or advocate or assist others in an unlawful act, (vi) impersonate any person, or misrepresent your identity or affiliation with any person or organization, and/or (vii) give the impression that they emanate from or are endorsed by us or any other person or entity, if that is not the case.

10. Communications and Other Site Content.

- a. The Exchange may contain features that allow customers to submit comments, questions, or other information, subject to your agreement that such content is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of any content. Comm-trex reserves the right (but not the obligation) to remove or edit such content.
- b. You represent and warrant that you own or otherwise control all of the rights to the content that you submit; that the content is accurate; that use of the content you supply does not violate this policy and will not cause injury to, or violate the rights of, any person or entity; and that you will indemnify Comm-trex for any and all claims resulting from content you supply (including, without limitation, for reasonable attorneys' fees). Comm-trex has the right (but not the obligation) to monitor and edit or remove any activity or content in its sole discretion, for any reason or no reason. Comm-trex takes no responsibility and assumes no liability for any content submitted by you or any third party.

11. Links from the Site.

If the Site contains links to other websites of third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. Commtrex has no control over the contents of those websites and accepts no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party websites linked to this Site, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

12. Representations. You hereby make the following representations to Commtrex, which representations will be deemed to be repeated by you on each date on which you use the Exchange (including as a Storage Provider, Shipper, Lessor, Lessee, Seller, Buyer, or Rail Services Provider) or on each date on which you place a Listing or Location on the Exchange:

- a. You are duly organized and validly existing under the laws of the jurisdiction of your organization or incorporation and, if relevant under such laws, in good standing;
- b. You have the power to execute and deliver (i) the Exchange Agreement (if any), (ii) any other documentation relating to such Exchange Agreement to which you are a party or that is required to deliver and to perform your obligations under (x) the Exchange Agreement, (y) these Terms of Use and (z) any agreements you have executed using the Site (each, a “**Transaction Agreement**”), and have taken all necessary action to authorize such execution, delivery and performance;
- c. Such execution, delivery and performance do not violate or conflict with any law applicable to you, any provision of your constitutional documents, any order or judgment of any court or other agency of government applicable to you or any of your assets or any contractual restriction binding on or affecting you or any of your assets;
- d. All governmental and other consents that are required to have been obtained by you with respect to this Agreement or any Transaction Agreements to which you are a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- e. Your obligations under these Terms of Use, the Exchange Agreement (if any) and any Transaction Agreements constitute your legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law));

- f. There is not pending or, to your knowledge, threatened against you, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against you of these Terms of Use, the Exchange Agreement (if any) or any Transaction Agreements to which you are a party or your ability to perform your obligations under these Terms of Use, the Exchange Agreement (if any) or any Transaction Agreement; and
- g. You are entering into the Exchange Agreement (if any), and each Transaction, as principal and not as agent of any person or entity.

13. Confidentiality

- a. You agree that you will keep and maintain the confidentiality of, and will not at any time divulge, disclose, communicate or reproduce, electronically or otherwise, to or for any person, firm, corporation or any other entity in any manner whatsoever, any information of which you have knowledge by virtue of using the Site of the names or contact information of other parties using the Site, or details of any offers by you or other parties, as applicable, made or being made on the Site.
- b. Commtrex agrees that it will keep and maintain the confidentiality of, and not at any time divulge, disclose, communicate or reproduce, to or for any person, firm, corporation or any other entity in any manner whatsoever, your name or any details of any Transactions entered into by you using the Site in any manner that without your permission involves the identification of your role in such Transaction.
- c. The provisions of this Section 12 will survive indefinitely.
- d. Notwithstanding anything to the contrary in the Exchange Agreement (if any) or these Terms of Use, you agree that Commtrex may disclose publicly, including through press releases, marketing materials or otherwise (the “**Materials**”), that Customer is a user of the Exchange, and that Commtrex may depict, reproduce and incorporate Customer’s logos, trademarks, service marks, trade names, and copyrights in such Materials, in each case for the purpose of promoting and marketing the Exchange.

14. Intellectual Property Rights; Non-Competition.

- a. To the extent Commtrex has any Intellectual Property rights in the Site, you acknowledge and agree that these rights are solely those of Commtrex and no one else, and that nothing herein prevents Commtrex from: (i) collecting, copying, maintaining, aggregating, compiling, processing, analyzing or otherwise using Transaction information on the Site for internal, regulatory, business or commercial purposes; (ii) performing data analytics of any kind with respect to any such data; (iii) producing compilations, interpretations, presentations, calculations and other processed output based on such data including, without limitation, pricing information by type and term and/or price indexes of any of the same; and (iv) communicating information to potential lessors, lessees, sellers, buyers, or brokers

of products; provided, however, that no such use by Commtrex shall violate Commtrex's confidentiality obligations under Section 12 above.

- b. You agree that under no circumstance will you replicate or seek to replicate the Site, or the functions and uses thereof, by creating or maintaining, or seeking to create or maintain, an internet-based electronic platform, interface or forum that is similar to the Site in content, form or function, including, without limitation, any such platform, interface or forum that would be used by you and/or third parties to facilitate transactions similar to Transactions.
- c. For purposes of these Terms of Use, "Intellectual Property" shall mean any and all of the following in any jurisdiction throughout the world: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations related to the foregoing; (iii) trade secrets and confidential know-how, including proprietary information, customer lists, technical information, data, process technology, plans, inventions and discoveries, whether or not patentable; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights, interests and protections, whether registered or unregistered.
- d. The provisions of this Section 13 will survive indefinitely.

15. Changes to Terms of Use.

Commtrex reserves all rights to modify, delete or append portions of the Terms of Use, the Privacy Policy and any other terms and conditions at any time. Any changes will be effective immediately and binding upon all visitors to the Site when we post them. We recommend you review the Terms of Use and Privacy Policy from time to time during your visits to the Site and note any changes before your continued use of the Site. Each time you access the Site, you agree to be bound by these Terms of Use then in effect. Accordingly your continued use of the Site after we post any revisions of the Terms of Use and Privacy Policy constitutes your acceptance of the revised terms and conditions.

16. Disclaimer of Warranties and Limitation of Liability.

Commtrex will not be responsible for any losses or damages to Rail Assets or any cargo, or any other losses, claims or damages, arising from any Transaction to which you are a party. Commtrex shall not be responsible if for any reason all or any part of the Site is unavailable at any time or for any period. From time to time and without liability, Commtrex may restrict access to some parts of the Site, or the entire Site.

You understand that Commtrex cannot and does not guarantee or warrant that files available for downloading from the internet or the Site will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to the Site for any

reconstruction of any lost data. COMMTREX WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE OR YOUR DOWNLOADING OF ANY MATERIAL POSTED ON THE SITE, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE SITE AND ALL INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) AND SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED BY COMMTREX ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER COMMTREX NOR ANY PERSON ASSOCIATED WITH COMMTREX MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE. WITHOUT LIMITING THE FOREGOING, NEITHER COMMTREX NOR ANYONE ASSOCIATED WITH COMMTREX REPRESENTS OR WARRANTS THAT THE SITE, ITS CONTENT OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE OR E-MAIL SENT FROM COMMTREX ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, COMMTREX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT WILL COMMTREX OR ITS LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH AN EXCHANGE AGREEMENT, THESE TERMS OF USE, THE USE OF THE SITE OR FROM ANY INFORMATION, CONTENT, MATERIALS, PRODUCTS (INCLUDING SOFTWARE) OR SERVICES INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES, WHICH CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

17. Notice Regarding Copyright Agent.

Commtrex respects the intellectual property rights of others and requests that users of the Site do the same. If you believe that any content on the Site violates or infringes upon your intellectual property rights pursuant to Title 17, United States Code, Section 512(c)(2), you may provide a notice to the designated Copyright Agent (as set forth below) for the Site containing the following:

- a. An electronic or physical signature of a person authorized to act on behalf of the owner of the copyright interest;
- b. Identification of the copyrighted work claimed to have been infringed;
- c. Identification of the material that is claimed to be infringing and information reasonably sufficient to permit Commtrex to locate the material;
- d. The address, telephone number, and, if available, an e-mail address at which the complaining party may be contacted;
- e. A representation that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- f. A representation that the information in the notice is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Copyright infringement claims and notices should include “Notice of Alleged Service Provider Infringement” in the title/subject and should be sent to:

Commtrex, Inc.
410 Pierce Street
Houston, TX 77002

Upon review of the copyright infringement claims and notices, if all appropriate information is included, we will take down the allegedly infringing material. A party whose material was removed improperly may send counter notice to the above-reference address. Counter notices must include the following information:

- a. The sender’s name, address, phone number and physical or electronic signature.
- b. Identification of the material and its location prior to removal.

- c. A statement under penalty of perjury that the material was removed by mistake or misidentification.
- d. The sender's consent to local federal court jurisdiction, or if overseas, to the appropriate judicial body.

18. Indemnification.

You agree to indemnify, defend, and hold Commtrex and its officers, directors, employees, affiliates, agents, licensors, and suppliers harmless from and against all claims, losses, expenses, damages, and costs, including reasonable attorneys' fees, resulting from (i) any breach of an Exchange Agreement, these Terms of Use, the Commtrex Privacy Policy, accessible at <http://www.commtrex.com/privacy> (the "**Privacy Policy**"), or applicable law by you, or (ii) any third party claim against Commtrex in connection with or related to the performance by you of your obligations under any Transaction or your failure to perform such obligations.

19. Limitation on Time to File Claims.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE SITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

20. Site Policies, Modification, and Waiver and Severability.

Please review our other policies posted on this Site. These policies also govern your visit to the Site. We reserve the right to make changes to the Site, policies, and these Terms of Use at any time. No waiver by Commtrex of any term or condition set forth in these Terms of Use shall be deemed a further or continuing waiver of any other term or condition, and any failure of Commtrex to assert a right or provision under these Terms of Use shall not constitute a waiver of such right or provision. If any of these conditions shall be deemed invalid, void, or for any reason unenforceable, that condition shall be deemed severable and shall not affect the validity and enforceability of any remaining condition.

21. Disputes, Governing Law and Arbitration.

This Site is controlled and operated by Commtrex from its offices in the United States. If there is any dispute which, in any manner, involves, arises out of, or relates to the Site, an Exchange Agreement or these Terms of Use, including, without limitation, your use of the Site (a "**Dispute**"), then by using the Site, you agree that all such disputes and the Terms of Use shall be governed by and construed in accordance with the (both substantive and procedural) of the State of Texas, without application of the conflict of law principles except that the federal laws of the United States of America shall be the governing laws to the extent they are required, with respect to issues involving intellectual property rights.

Agreement to Arbitrate. You further agree that if you and Commtrex do not resolve any Dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration governed by the Federal Arbitration Act (“FAA”). *You are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury. Instead, all disputes will be resolved before a neutral arbitrator or a panel of three neutral arbitrators upon agreement of the parties, whose decision will be final except for a limited right of appeal under the FAA.* Any court with jurisdiction over the parties may enforce the arbitrator’s award in connection with any litigation of any such disputes arising between or among the parties.

The only exception to this agreement to arbitrate is in instances where injunctive relief and other relief relating to infringement of intellectual property rights, misappropriation of trade secrets and/or violations of the Computer Fraud and Abuse Act (or the equivalent state law statute) is being sought by a party to the dispute. Under such limited circumstances, you hereby consent to engage in litigation before a court subject to the exclusive jurisdiction and venue of the Courts located in the Southern District of Texas and/or Harris County, Texas.

22. Class Action Waiver.

Any proceedings to resolve or litigate any Dispute in any forum will be conducted solely on an individual basis. Neither you nor Commtrex will seek to have any Dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposed to act in a representative capacity. No proceeding will be combined with another without the prior written consent of all parties to all affected proceedings.

23. Google Maps Pass-Through Terms of Service

Users are bound by the Google Maps/Google Earth Additional Terms of Service https://maps.google.com/help/terms_maps.html (including the Google Privacy Policy <https://www.google.com/intl/ALL/policies/privacy/index.html>).

24. Notices; Contact Information.

Any notice required under an Exchange Agreement or these Terms of Use may be given as follows to the address or number or email address provided to the Exchange during the registration process (as applicable) and will be deemed effective as indicated: (i) if sent by certified or registered mail or the equivalent (return receipt requested), on the date it is delivered or delivery is attempted; (ii) if sent by facsimile, on the date it is received by a responsible employee of the recipient in legible form; (iii) if sent by email, on the date it is delivered, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a day other than a Saturday or Sunday on which commercial banks are open for business in New York (a “**Business Day**”), or that notice is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day. You may, at any time by written notice to Commtrex, change

the address, telephone number, facsimile number or email details at which notices are to be given to you.

If you have any questions about these Terms of Use, Privacy Policy or about the content, information, or services on this Site, please visit our Contact Us page and use any of the methods described on that page found at www.commtrex.com.

25. Miscellaneous.

All remedies herein expressly conferred upon you or Commtrex will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon the applicable party, and the exercise by you or Commtrex of any one remedy will not preclude the exercise of any other remedy. No failure or delay by Commtrex in exercising any right, power or privilege in respect of these Terms of Use or an Exchange Agreement will be presumed to operate as a waiver thereof, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege. Should any provision of these Terms of Use or an Exchange Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions will remain in full force and effect as if the Terms of Use and/or an Exchange Agreement, as applicable, had been executed without the invalid portion. In the event any provision of these Terms of Use or an Exchange Agreement is declared invalid, you and Commtrex may, but are not required to, renegotiate to restore these Terms of Use or an Exchange Agreement, as applicable, as near as possible to its original intent and effect. The headings used herein and in an Exchange Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting these Terms of Use or such Exchange Agreement, as applicable. The Terms of Use, Exchange Agreement (if any) and Privacy Policy constitutes the entire agreement between you and Commtrex relating to the subject matter hereof and supersedes any other agreements, written or oral, between you and Commtrex concerning such subject matter. In the event of any inconsistency between the provisions of any Transaction Agreement and these Terms of Use or an Exchange Agreement, the Terms of Use or the Exchange Agreement, as applicable, will prevail.