

TERMS OF SERVICE

Last updated: December 18, 2024

INTRODUCTION

RailTrax LLC, d/b/a RailCommodore (“**RailCommodore**,” “**we**,” “**us**,” or “**our**”), a Delaware limited liability company, makes its visual collaboration software as subscription services (each, a “**Subscription Service**”), and may provide implementation, consulting, configuration, integration, training, advisory, development, and other professional services (“**Professional Services**” and collectively with the Subscription Services, Support (defined below), and any other services described in an Order (defined below), the “**Services**”). Our marketing website, <https://railcommodore.com>, is referred to herein as the “**Website**”.

RailCommodore may update these Terms of Service (the “**Terms**”) from time to time in accordance with the “Changes to the Terms” section below.

DISPUTES ABOUT THESE TERMS OF SERVICE AND THE SERVICES ARE SUBJECT TO BINDING ARBITRATION AND A WAIVER OF CLASS ACTION RIGHTS AS SET FORTH IN THE “MANDATORY ARBITRATION” AND “CLASS ACTION WAIVER” SECTIONS BELOW.

1. Accepting the Terms

- 1.1 Acknowledgement. You acknowledge and agree that you have read, understand, and agree to be bound by these Terms by either:
 - a) clicking or tapping on a button indicating your acceptance (usually during the registration or onboarding process);
 - b) accessing or using a Service or Website; or
 - c) executing or making payment based on an ordering document, statement of work or invoice (each, an “**Order**”) that references these Terms.
 - d) Regardless of what type of User (defined below) you are, you agree that these Terms create a legally binding relationship between you and RailCommodore and govern your use of the Services and Website.
- 1.2 Authority. By accepting these Terms, you (the “**User**”) represent that you have the legal power to do so. If you accept these Terms on behalf of an organization:
 - a) “**you**” and “**your**” will refer to that organization, and any individual accessing a Service through your account will be referred to as a “**User**”;
 - b) you represent and warrant that you have the authority to bind the organization; and

- c) you understand and agree that the organization is bound by and responsible for ensuring that each of its Users comply with these Terms.

2. Your Relationship with RailCommodore

2.1 Types of Users. RailCommodore has two different types of Users:

- a) Users of the Website ("**Site Visitors**"); and
- b) Users who are part of a paid subscription plan ("**Subscribers**").

2.2 Affiliates. If you are an entity purchasing a plan with multiple Users, your affiliates may only use the Services purchased by you as Users on your account by creating their own User profiles.

2.3 Prohibited Users. If you are barred from receiving the Services under the laws of the United States or other countries, including the country in which you are a resident or from which you use the Services, you may not use the Services. If you represent an entity purchasing a plan with multiple Users, you will ensure that:

- a) your Users do not use any Services in violation of any export restriction or embargo by the United States; and
- b) you do not provide access to any Services to persons or entities on any restricted lists.

2.4 Age Requirement for Users. If you are under 18 years old, you may not create a RailCommodore account or use the Services.

3. The Services Provided by RailCommodore

3.1 Subscription Services. You and each User may access and use the applicable Subscription Service during the Subscription Term (defined below) solely for your internal business or personal purposes, subject to payment of the applicable fees and the requirements of these Terms and the applicable Order. You may purchase additional Subscription Services during the applicable Subscription Term at your then-current unit price. "**Subscription Term**" means the period of time beginning on the earliest start date and concluding on the latest end date listed in an Order.

3.2 Features and Functionality. The Subscription Services include the features and functionality applicable to the subscription. Available subscription plans and details of those plans may change over time but will not be materially degraded mid-Subscription Term.

3.3 Subscription Renewal. If you are a Subscriber, you are enrolling in a recurring payment plan. After each Subscription Term, your Subscription Service will automatically renew with the current products for the same period of time (e.g., 1 month for the monthly plan), unless either party cancels

- i. prior to the end of the current Subscription Term for a monthly account, or

- ii. **before conversion of a free trial to a paid plan (see the section titled “Free Trials” below), as outlined in the “Term and Termination” section below.**

You authorize RailCommodore to invoice you or charge the designated payment method at the start of each new Subscription Term at the quantity and price then in effect for your paid account. An account owner or admin may review and make changes to subscription levels, number of Users, and Subscription Term on your Company Admin page. Where required by applicable law, RailCommodore will provide notice in advance of your subscription automatically renewing.

- 3.4 Professional Services. RailCommodore may provide Professional Services as described in, and subject to payment of the fees specified in, an Order. Any material changes requested or required to be made to the Order will require a change order agreed to and signed by the parties. RailCommodore hereby grants you the right to access and use the deliverables identified in an Order for Professional Services (“**Deliverables**”) solely for your internal business or personal purposes and in accordance with these Terms.
- 3.5 Beta Services. If you or a User receive any Services released as beta, pilot, limited release, non-production, or evaluation (“**Beta Features**”), you acknowledge and accept that such Services are provided “AS-IS”, without any representations, warranties, support, maintenance, or other obligation of any kind from RailCommodore. Unless otherwise agreed in an Order, RailCommodore may terminate your access to, or use of, a Beta Service or a Beta Feature at any time, which may include permanent deletion of your Content (defined below).
- 3.6 Free Trials. RailCommodore may offer a 30-day free trial period upfront for its Subscription Service. Your first payment will be charged immediately following the conclusion of the free trial period unless you cancel the trial. RailCommodore will provide notice of the terms of the free trial period at the time you begin the trial. **You may cancel the free trial to avoid conversion into a paid subscription at the end of the free trial term by providing notice in accordance with the section titled “Term and Termination”.**
- 3.7 Non-RailCommodore Applications. If you or a User chooses to utilize a Non-RailCommodore Application (defined below), your purchase and use of such Non-RailCommodore Application is subject to the agreement between you and the third-party provider. RailCommodore has no liability with respect to procurement, maintenance, use, or interoperability of any Non-RailCommodore Application, and Non-RailCommodore Applications are not part of the Services. “**Non-RailCommodore Application**” means a software application, service, integration, or functionality that is developed or provided by a third party, is not owned by RailCommodore or under RailCommodore’s control, and interoperates with a Service.

4. Using the Services

- 4.1 Access and Users. You will obtain, maintain, and support all internet access, equipment, and ancillary services needed to access the Services and Deliverables. Each User must keep a secure password for accessing the Subscription Service and keep such password confidential. You will:
- a) if applicable, obtain any consents necessary for RailCommodore to provide the Services;
 - b) maintain commercially reasonable security standards with respect to use of the RailCommodore Assets (defined below in the section titled "Intellectual Property"); and
 - c) in the event of any unauthorized access to or use of the Services or Deliverables, promptly notify RailCommodore at info@railcommodore.com.

4.2 Your Responsibilities. You are responsible for:

- a) access to and use of the Subscription Service(s) and Deliverables by the Users on your account and each User's compliance with these Terms;
- b) the secure transmission of your Content to the Subscription Service(s);
- c) the legality, reliability, integrity, accuracy and quality of the Content, any conclusions drawn or actions taken therefrom, and the means by which you or the Users acquired the Content so that RailCommodore and its service providers may lawfully use, process, and transfer the Content in accordance with these Terms;
- d) if desired, backing up your Content outside of the Subscription Service;
- e) using commercially available technologies to prevent the introduction of viruses, malware, Trojan horses, worms, spyware or other destructive code ("**Malware**") into the Subscription Service(s); and
- f) instructing the Users on the Use Restrictions and the limitations on Protected Information (each defined below), and ensuring that those limitations and/or Use Restrictions are not breached. "**Content**" means the data, information, images, and other content that is uploaded to, imported into, or created in a Subscription Service by the Users, all of which is your Confidential Information (defined below).

- 4.3 Protected Information. You acknowledge that the Subscription Service(s) are not designed or intended to store, process, or otherwise handle Protected Information, and that RailCommodore does not classify Content or provide special protection based on the type of data submitted by you. If Protected Information is entered into a Subscription Service, RailCommodore will treat such information as your Confidential Information and afford it the protections provided in these Terms but will not afford it any added protections based on the type of data provided. You acknowledge that any Protected Information submitted is done at your own risk and that RailCommodore will not be liable for heightened or statutory damages due to the nature or type of Protected Information

submitted. **“Protected Information”** means information that is subject to specific regulations or laws that impose increased protections, obligations, and/or penalties with respect to handling that type of information, or that is not appropriate for use in the Services, as intended by RailCommodore. Protected Information includes, without limitation, classified information, data that is subject to the Payment Card Industry Data Security Standards (PCI DSS), Health Insurance Portability and Accountability Act (HIPAA), Gramm-Leach-Bliley Act (GLBA), Criminal Justice Information Services (CJIS) Security Policy, IRS Publication 1075 or any similar legislation in an applicable jurisdiction, or any credit or debit card and magnetic stripe information, government issued identification numbers, health or biometric information, education records, financial account information, personally identifiable information of children under the age of 16, or information deemed “sensitive” or “special category” under applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs).

4.4 Use Restrictions. You will not, and will ensure that each User does not:

- a) license, sublicense, sell, resell, rent, lease, transfer, distribute, provide access, or otherwise commercially exploit, or make the Services or Deliverables available to any third party except as expressly authorized herein;
- b) copy, modify, translate, adapt, merge, or create derivative works of the Services or Deliverables or disassemble, decompile, reverse engineer, or otherwise extract the source code of, or reduce to human-perceivable form, any part of the Services or Deliverables unless the foregoing restrictions are expressly prohibited by applicable law;
- c) use or access the Services or Deliverables or any component of them
 - i. to develop a competitive product or service, one with similar ideas, features, functions or graphics, or to determine whether the RailCommodore Assets are within the scope of any patent,
 - ii. other than in compliance with these Terms and all applicable laws and regulations (including export control laws and restrictions);
- d) remove or modify any proprietary markings or restrictive legends in a Subscription Service or on the Deliverables;
- e) infringe or misappropriate any RailCommodore Assets;
- f) attempt to gain unauthorized access to the Services or any portion thereof;
- g) knowingly, intentionally or negligently introduce Malware into, or otherwise engage in any malicious act or disrupt the security, integrity or operation of, a Subscription Service;

- h) access or attempt to access a Subscription Service by any means other than RailCommodore's publicly supported interfaces, including any automated means (i.e., use of scripts or web crawlers);
- i) probe, scan, or test the vulnerability of any RailCommodore system or network; or
- j) access, store, create, share, display, publish or transmit any material that
 - i. a person would reasonably believe to be unlawful or related to illegal activity, threatening, deceptive, defamatory, discriminatory, obscene, libelous, an invasion of privacy, or
 - ii. infringes the intellectual property rights of a third party through the Services ((a)-(j) (collectively, the "**Use Restrictions**").

5. Sharing Features in the Services

5.1 Third-Party Content. The Services may contain content provided by third parties (e.g., templates) that is not owned by RailCommodore and that may be protected by intellectual property rights of those third parties. Such content is the sole responsibility of the person or entity from whom it originated, and you are responsible for your use of it.

5.2 Collaboration. If you accept an invitation to view or collaborate on another User's Content, you acknowledge that your access to that Content and any information you provide or changes you make will be under the sole control of the owner of that Content. In addition, the owner of that Content, other Users who have access to that Content, and the owner and administrators of the account containing that Content will be able to view certain information, including personal information, about you.

6. RailCommodore's Provision of the Services

6.1 Support and Documentation. Support requests must be submitted to info@railcommodore.com. Technical product support will be provided as quickly as possible and will be responded to in the order in which requests are received, during regular business hours. RailCommodore's end user documentation is available in-product and through the online help feature of the Subscription Service(s) at <https://app.railcommodore.com/>, as may be updated from time to time.

6.2 Updates. RailCommodore makes and automatically delivers updates (e.g., bug fixes, enhancements) to the Subscription Services on an ongoing basis.

7. Confidentiality

7.1 Definition. "**Confidential Information**" means information of or provided by a party ("**disclosing party**") to the other party ("**receiving party**") that is non-public, proprietary, business, technical, security, legal, or financial information that is marked or identified as Confidential Information or

would reasonably be understood to be confidential, such as information about products, Beta Features, processes, services, trade secrets, marketing and business plans, client lists, pricing, financial information, system architecture, security programs, or intellectual property. For clarity, pricing for the Services is RailCommodore's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information that:

- a) the receiving party possesses without a duty to keep confidential prior to acquiring it from the disclosing party;
- b) is or becomes publicly available through no violation of this agreement by the receiving party;
- c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party; or
- d) is developed by the receiving party independently of, and without reliance on, confidential or proprietary information provided by the disclosing party.

7.2 Use and Disclosure. Each party may be given access to Confidential Information of the other party in connection with these Terms. The receiving party may only use this Confidential Information as provided for in these Terms or to exercise its rights hereunder and may only share this Confidential Information with its employees, agents, advisors, procurement agents and service providers who need to know it, provided they are subject to similar confidentiality obligations. The receiving party will use the same degree of care, but no less than a reasonable degree of care, as such party uses with respect to its own Confidential Information to protect the disclosing party's Confidential Information and to prevent any unauthorized use or disclosure thereof. Neither party is responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party not under the receiving party's control. If the receiving party is compelled by law to disclose the other party's Confidential Information, it will provide the disclosing party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. These confidentiality obligations will remain in effect for the Term (defined below in the section titled "Term and Termination") and for an additional 1 year following termination.

8. Intellectual Property

8.1 Your Content. As between the parties, you own all rights, title, and interest in and to the Content in the accounts for which you are the account owner and your Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth herein, RailCommodore acquires no right, title, or interest in or to your Content or Confidential Information.

8.2 RailCommodore's Use of Your Content. Subject to these Terms, you grant RailCommodore the right to access, hold, use, and process Content until removed from a Subscription Service:

- a) as requested by you or a User;
- b) as necessary to provide and improve the Services, including to identify, investigate, or resolve technical problems with the Services;
- c) to detect and prevent fraud or violations of these Terms; and
- d) as required by applicable law, regulation, legal process or enforceable governmental request. RailCommodore may utilize subcontractors or SaaS tools in connection with RailCommodore's provision of the Services, including processing Content, provided that such third parties are subject to appropriate confidentiality and data security obligations. RailCommodore is responsible for such third parties' acts and omissions in relation to RailCommodore's obligations to you.

8.3 RailCommodore. As between the parties, RailCommodore owns all rights, title, and interest in and to the RailCommodore Assets (defined below) and RailCommodore Confidential Information, including all intellectual property and proprietary rights therein. Except as expressly set forth herein, RailCommodore does not convey any rights to you or any User. "**RailCommodore Assets**" means

- a) the Subscription Service(s), work product, Documentation, and Deliverables (but not any Content or your Confidential Information contained therein); and
- b) all RailCommodore copyrights, patents, trademarks, trade names, trade secrets, specifications, technology, software, data, methodologies, machine learning models, changes, improvements, components, and documentation used to provide the Services or made available in connection herewith, and all intellectual property, proprietary rights and underlying source code, object code, and know-how in and to the foregoing.

You or your Users may voluntarily provide feedback, comments, or suggestions directly to RailCommodore or by posting on any RailCommodore-hosted forum or page ("**Feedback**") to RailCommodore and RailCommodore may use such Feedback without any obligations or restrictions. RailCommodore may generate, derive and use usage, statistical, learned, and technical information (that does not reveal any of your Confidential Information or Content to third parties) to operate, improve, test, analyze, and develop the Services and for other internal business purposes.

8.4 Trademark Violations. If you believe that RailCommodore, or any User, has violated a copyright, trademark, or other intellectual property right you claim in your work, please contact us at info@railcommodore.com. RailCommodore responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act ("**DMCA**").

9. Representations and Warranties

9.1 RailCommodore. RailCommodore warrants that:

- a) Support and Professional Services will be performed in a competent and workmanlike manner;
- b) the Deliverables will conform to the specifications in the applicable Order;
- c) it has the necessary authority to enter into these Terms; and
- d) it will comply with all laws and regulations (including export control laws and restrictions) applicable to its provision of the Services to its users generally (i.e., without regard for your particular use of the Services or laws and regulations specific to you and your industry).

If you believe a Service or Deliverable does not comply with the warranties in (a)-(c), you must notify RailCommodore in writing within 30 days of discovery of the nonconformity. To the maximum extent permitted by applicable law, as your exclusive remedy and RailCommodore's sole liability for breach of these warranties, RailCommodore will use commercially reasonable efforts to correct the non-conforming Service or Deliverable at no additional charge within a reasonable time period. These warranties will not apply to any failure caused by you, any User, or a person acting at your direction.

9.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RAILCOMMODORE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING ANY NON-RAILCOMMODORE APPLICATION WITH WHICH THE SERVICE MAY INTEROPERATE. RAILCOMMODORE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME OR THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

10. Billing and Payment

10.1 Services Fees. You will pay the fees and taxes specified in each Order for the applicable Services. In addition, you will reimburse RailCommodore for reasonable, documented, out-of-pocket expenses (including all travel costs and expenses) incurred by RailCommodore while providing Professional Services that are authorized or pre-approved by you in writing.

10.2 Payment. RailCommodore will bill your monthly subscription fee, in advance, based on your selected monthly subscription plan. Any

additional fees, including but not limited to a monthly fee per railcar, will be billed in arrears. The term of your Subscription Service will be available in your Company Admin page and/or set forth in the associated Order. Unless specified in an Order, Professional Services will be performed remotely and are provided on a time and materials basis. You authorize RailCommodore to charge your credit card or other payment method for all fees and expenses, at the quantities and prices associated with your paid account, when due. RailCommodore may enable other forms of payment in the Account Settings page, which may be subject to additional terms. Unless otherwise specified in an Order, payments for invoices are due 30 days after the invoice date. You agree to promptly notify RailCommodore in writing of any changes to your billing information during any Subscription Term. In the event your non-invoice form of payment fails and is not updated within RailCommodore's system within 10 days of the failure, RailCommodore will invoice the remaining Subscription Service term with payment due upon receipt. Access to RailCommodore will be revoked after 10 days of non-payment and will be re-enabled only after full payment is received. RailCommodore reserves the right to correct any billing errors or mistakes that RailCommodore identifies in an invoice or after a payment is received.

10.3 Non-refundable. Except as expressly set forth in these Terms or when required by applicable law:

- a) all fees are non-cancellable and once paid are non-refundable; and
- b) products and quantities purchased cannot be decreased during a Subscription Term.

10.4 Pricing. Unless specified in an Order, Service pricing is specified on the Website. RailCommodore may modify pricing for renewal periods upon written notice to you or an account admin (in the form of an invoice or any other form of notice used by RailCommodore to communicate with you); provided that, if the number of units purchased for such renewal term is equal to or greater than the number of units up for renewal, RailCommodore will provide notice prior to your cancellation or subscription change deadline described in the section titled "Termination and Subscription Changes By You" below. If you do not accept the pricing change, you may elect to not renew your paid account subject to the section titled "Term and Termination" below.

10.5 Billing disputes. Billing disputes must be notified to RailCommodore in writing within 30 days from discovery of an error. Except as prohibited by law, RailCommodore may charge a late fee of 1.5% (or, if lower, the highest rate permitted by law) per month on undisputed past due amounts. You will be responsible for all reasonable expenses (including attorneys' fees) incurred by RailCommodore in collecting delinquent amounts. If you require a purchase order, vendor registration form, or other documentation, such requirement will in no way relieve, affect or delay your obligation to pay any amounts due hereunder.

- 10.6 Currency and Taxes. All amounts payable to RailCommodore will be paid in the currency set forth on the pricing page, in the Order, or in USD and are exclusive of any applicable sales or use taxes (such as GST or VAT). If RailCommodore is obligated to collect or pay these taxes, they will be stated separately on each invoice, unless you provide RailCommodore (in advance) a valid tax exemption certificate authorized by the applicable taxing authority. If you are required by law to withhold any taxes from your payments to RailCommodore, you must provide RailCommodore with an official tax receipt or other appropriate documentation to support such withholding and reimburse RailCommodore for such withholding tax.
- 10.7 Procurement Agents. If you purchase Services through a procurement agent, you will remain liable for the fees payable to RailCommodore and the other obligations in this agreement.

11. Indemnification

- 11.1 By RailCommodore. RailCommodore will indemnify you, your officers, directors and employees (the “**Customer Indemnified Parties**”) against any claim, action, demand, suit or proceeding (each, a “**Claim**”) brought against the Customer Indemnified Parties by a third party alleging that a Subscription Service or Deliverable infringes such third-party’s intellectual property rights, including any finally awarded damages or settlement amount and reasonable expenses (including attorneys’ fees) to the extent arising from such Claim. Notwithstanding the foregoing, RailCommodore will not be obligated to indemnify the Customer Indemnified Parties if an infringement claim arises from:
- a) the Content;
 - b) a User’s misuse of a Subscription Service;
 - c) a User’s use of the Subscription Service in combination with any products, services, or technology not provided by RailCommodore or a modification of a Subscription Service or Deliverable by you or a User, if the Subscription Service or Deliverable or use thereof would not infringe without such combination or modification; or
 - d) continued use of a Subscription Service or Deliverable after written notice by RailCommodore to discontinue use. If an infringement Claim is made or threatened, RailCommodore may, in its sole discretion:
 - i. replace or modify the infringing Subscription Service or Deliverable so that it is non-infringing (but functionally equivalent);
 - ii. procure the right for you to continue using the Subscription Service or Deliverable; or
 - iii. notwithstanding RailCommodore’s obligation to indemnify, terminate use of the infringing Subscription Service or Deliverable and refund any unused prepaid fees covering the terminated portion of the Subscription Service or Deliverable.

- 11.2 By You. You will indemnify RailCommodore and RailCommodore's affiliates, and their respective officers, directors and employees (the "**RailCommodore Indemnified Parties**") against any Claim made or brought against the RailCommodore Indemnified Parties by a third party or User arising from or related to your Content or the actions of your administrator(s) with respect to your account, including any finally awarded damages or settlement amount and reasonable expenses (including attorneys' fees) to the extent arising from such Claim.
- 11.3 Process. The party seeking indemnification (the "**Indemnified Party**") will provide the other party (the "**Indemnifying Party**") prompt written notice of any Claim and reasonable cooperation to the Indemnifying Party in the defense, investigation or settlement of any Claim at the Indemnifying Party's expense. The Indemnifying Party will have sole control of such defense, provided that the Indemnified Party may participate in its own defense at its sole expense. The Indemnifying Party may not settle a Claim without the Indemnified Party's consent if such settlement imposes a payment or other obligation on the Indemnified Party. This section sets forth the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy for, any type of Claim described in this section.

12. Limitation of Liability

- 12.1 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:
- a) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR DATA, BUSINESS INTERRUPTION, DEPLETION OF GOODWILL, OR INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS ARISING OUT OF OR RELATED TO THESE TERMS, REGARDLESS OF THE BASIS OR TYPE OF CLAIM AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS; AND
 - b) EACH PARTY'S AGGREGATE LIABILITY FOR DAMAGES OR LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE GREATER OF
 - i. THE AMOUNT PAID OR PAYABLE BY YOU HEREUNDER WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY OR
 - ii. \$200.00. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

The previous sentence does not apply to instances of willful misconduct, to amounts payable to third parties under a party's indemnification obligations, to your obligations to pay fees, expenses and taxes when due, to noncompliance with the section titled "Using the Services" above, or to

any infringement or misappropriation by a party of any intellectual property rights of the other party.

- 12.2 General. The parties acknowledge and agree that the limitations of liability, disclaimer of warranties, and any exclusion of damages included herein represent an allocation of risk between the parties (including the risk that a remedy may fail of its essential purpose) which is reflected by the fees paid. Notwithstanding the foregoing, nothing in these Terms excludes or limits RailCommodore's warranty obligations or liability for losses which may not be lawfully excluded or limited by applicable law. Only the limitations which are lawful in your jurisdiction will apply to you and RailCommodore's liability will be limited to the maximum extent permitted by law.

13. Term and Termination

- 13.1 Term. These Terms, which are effective as of the date shown above, will apply until all accounts under your control are permanently closed unless superseded by a written agreement between you and RailCommodore (the "**Term**").

- 13.2 Termination and Subscription Changes By You. If you want to cancel your auto-renewal, reduce your quantity of User subscriptions for an upcoming renewal, or terminate your subscription, you must do so by either notifying RailCommodore at info@railcommodore.com or making the desired adjustments in the Company Admin page within the applicable time period:

- a) any time before the end of your then-current Subscription Term for a monthly account, or
- b) before conversion of a free trial to a paid plan.

If you do not make the desired adjustments or notify RailCommodore within the applicable time period, your paid account will renew as outlined in the section titled "Subscription Renewal" or your free trial will convert into a paid subscription as outlined in the section titled "Free Trials". You will continue to have access to all the features of your paid or trial account until the end of the then-current Subscription Term. RailCommodore does not provide any refunds or credits for partial Subscription Terms.

- 13.3 Termination by Either Party. A party (referred to within this section as, the "**relevant party**") may terminate the Services if:

- a) if the other party ("**breaching party**") commits a material breach of these Terms (or has acted in a manner which clearly shows that the breaching party does not intend to, or is unable to comply with, the provisions of the Terms) and such breach either
 - i. is not capable of being cured, or
 - ii. has not been cured within 10 days of receiving written notice of the breach from the relevant party;
- b) immediately upon the breaching party ceasing to operate in the ordinary course, making an assignment for the benefit of creditors, or

becoming the subject of any insolvency, bankruptcy, liquidation, dissolution, or similar proceeding; or

c) if the relevant party is required to do so by law.

13.4 Termination by RailCommodore. RailCommodore, acting reasonably, may terminate your access to any or all of the Services and/or close your account to protect RailCommodore's legitimate interests by giving you 30 days' written notice to your email address on file and providing a pro rata refund for any prepaid, unused subscription fees for the Services.

13.5 Suspension. RailCommodore reserves the right to suspend access to the Service(s) if:

a) you have undisputed amounts past due; or

b) RailCommodore reasonably determines that you or any Users on your account are using a Service in a way that creates a security vulnerability, may disrupt others' use of a Service, or have misappropriated or infringed RailCommodore's or another third-party's intellectual property or proprietary rights.

RailCommodore will only suspend access to the extent, and for the duration, necessary to address the violation and will promptly restore access once the issue has been resolved. RailCommodore will not suspend access if you are (reasonably and in good faith) disputing a charge and cooperating in resolving the dispute. You acknowledge and agree that if RailCommodore suspends access to your account, you may be prevented from accessing the Services, your account details, or any files or other Content contained in your account.

13.6 Effect of Termination. On termination of the Services:

a) all Orders will terminate;

b) RailCommodore will disable your account and each User's access to the paid Services;

c) you will immediately pay any accrued but unpaid and undisputed fees;

d) each party will return and make no further use of, or destroy (subject to each party's automated deletion schedule and back-up policy), any Confidential Information belonging to the other party, subject to (e); and

e) provided you have permanently closed your account(s), RailCommodore will delete all Content in accordance with its automated deletion schedule and back-up policy.

You may export or download your Content at any time from the Subscription Service in accordance with the Documentation. Any requested post-termination transition assistance is subject to the mutual agreement of the parties (and may require payment of Professional Services fees to RailCommodore).

13.7 Retention of Information and Content. If you cancel your subscription, your account will be terminated, and you will no longer have access to the system. Your information and content may be deactivated but will not be deleted immediately. Data will remain available for 90 days, but you will

not be able to access the system during this period. After 90 days, any remaining data may be deleted, and access will be permanently lost. RailCommodore may retain copies of content as part of its legal and financial compliance obligations, but will continue to follow these Terms in relation to any retained data. To delete your content from our servers after canceling your subscription, you must permanently close your account. For assistance with permanently closing your account, please review our documentation or contact us at info@railcommodore.com.

- 13.8 Site Visitors. A Site Visitor may terminate its use of the Website at any time by ceasing further use of the Website. RailCommodore may terminate your use of the Website and deny you access to the Website in our sole discretion for any reason or no reason, including for violation of these Terms.

14. Changes to the Terms

- 14.1 Amendments and Effective Date. RailCommodore may make changes to the Terms from time to time. When these changes are made, RailCommodore will make a new copy of the Terms available. If you have an existing account, the new Terms will apply upon your renewal or the beginning of the next monthly period listed on your Order, in which case your continued usage of the Services after such date or payment of an associated invoice will constitute your acceptance of the changes.
- 14.2 Waivers. Any waiver of these Terms must be in writing and no written waiver will operate or be construed as a waiver of any subsequent breach. The failure of either party to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision or of any other right or provision.

15. Mandatory Arbitration

- 15.1 Cooperative Resolution Process. The parties agree that most disputes can be resolved without resort to litigation or arbitration. If you have any dispute with us, you agree that before taking any formal action you will contact us at info@railcommodore.com and provide a brief, written description of the dispute and your contact information (including your username, if your dispute relates to an account). Except for the Excluded Disputes (defined below), the parties agree to use their best efforts to settle any dispute directly through consultation with each other, and good faith negotiations will be a condition to either party initiating an arbitration (the “**Cooperative Resolution Process**”). If the parties do not reach an agreed-upon solution within a period of 30 days from the time the Cooperative Resolution Process is initiated, then either party may initiate binding arbitration as the sole means to resolve any dispute (except for Excluded Disputes) subject to the terms set forth below.

15.2 Mandatory Arbitration. Any dispute, controversy, or claim relating to, connected with, or arising out of the subject matter of these Terms, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate (a “**Dispute**”), will be determined by binding arbitration in Arkansas before one arbitrator. The arbitration will be administered by American Arbitration Association pursuant to AAA Fast Track Rules where applicable. Judgment on an award may be entered in any court having jurisdiction. This clause does not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Any demand for arbitration under these Terms must be made before the statute of limitations applicable to such claim has expired. In any arbitration arising out of or related to these Terms, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recovery of any such damages.

15.3 Excluded Disputes. Notwithstanding the parties’ decision to resolve all Disputes through arbitration, the following Disputes may be brought in any state or federal court of competent jurisdiction seated in Arkansas:

- a) disputes relating to or arising from misappropriation, infringement, validity and/or enforceability of a party’s intellectual property rights (including patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights), or
- b) any action by a party seeking entry of a temporary restraining order, preliminary injunctive relief, or permanent injunctive relief (collectively, the “**Excluded Disputes**”).

16. Class Action Waiver

16.1 Class Action Waiver. The parties agree that an arbitrator will not have authority to conduct class arbitration of any Dispute. You and RailCommodore each agree that any arbitration or court action to resolve any Dispute will take place on an individual basis without resort to any form of class, consolidated, or representative action (the “**Class Action Waiver**”). YOU UNDERSTAND AND AGREE THAT THE CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION FOR ANY DISPUTE, INCLUDING CONSUMER DISPUTES AND BUSINESS DISPUTES. If any court or arbitrator determines that the Class Action Waiver is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above will be null and void in their entirety and the parties will be deemed to have not agreed to arbitrate Disputes.

17. General Legal Terms

- 17.1 Publicity. Subject to any usage guidelines you provide to RailCommodore, and unless otherwise set forth in an Order, RailCommodore may use your name, corresponding trademark or logo, and non-competitive use details in both text and pictures to identify you as a customer and highlight such use details in publicly available oral and written statements, including on RailCommodore's website, in marketing materials, and in press releases. To request removal of this identification, please notify us in writing at info@railcommodore.com. In addition, and without otherwise limiting the parties' confidentiality obligations under these Terms, RailCommodore may disclose the relationship between you and RailCommodore if legally required or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.
- 17.2 Relationship of the Parties. You and RailCommodore are independent contractors. These Terms do not create or imply any agency, partnership, joint venture, fiduciary, employment or franchise relationship. No right or cause of action for any third party is created by these Terms or any transaction under it.
- 17.3 Force Majeure. Neither party is liable for delay or default hereunder if caused by conditions beyond its reasonable control, including natural disasters, acts of God, hacker attacks, acts of terror or war, riots, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures.
- 17.4 Governing Law. These Terms and your relationship with RailCommodore under the Terms, are governed by the laws of the State of Arkansas (USA) without regard to its conflict or choice of law rules. To the extent the arbitration provisions herein are excluded by written agreement, held void or unenforceable, and for all Excluded Disputes, the parties consent to exclusive jurisdiction and venue in the state or federal courts seated in Arkansas to resolve any Dispute. Any legal or arbitration proceeding will be in the English language.
- 17.5 Injunctive Relief. Each party acknowledges that any breach, threatened or actual, of the confidentiality and intellectual property obligations hereunder may cause irreparable injury to the other party for which there may not be an adequate remedy at law. Therefore, upon any such breach or threat thereof, the party alleging breach will be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it, without the requirement of posting a bond.
- 17.6 Notices. You agree that RailCommodore may provide you with notices by email, regular mail, or postings on the Services. You may provide notice to RailCommodore by emailing info@railcommodore.com.
- 17.7 Assignment. Neither this agreement, nor the rights or obligations hereunder may be assigned, transferred, or novated by either party without the other party's prior written consent, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either

party may assign, transfer, or novate this agreement (including all Orders) without the consent of the other party to an affiliate or a successor in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party, provided that all fees owed and due by you have been paid.

17.8 Entire Agreement. These Terms (including any applicable Order) and any websites, policies, exhibits, schedules, supplemental terms, or documents referred to herein, constitute the entire agreement between you and RailCommodore related to the use of the Services and supersede all prior or contemporaneous representations, agreements, or understandings (written or verbal) relating to the subject matter hereof, including any non-disclosure agreements previously entered into by you and RailCommodore. If you require purchase orders, vendor registration forms, subsequent non-disclosure agreements, payment or vendor portals, or the like, they will be for convenience only, and all associated terms and conditions (pre-printed or otherwise and regardless of how or when referenced or acknowledged, and whether or not signed by either party) will be void and of no effect.

17.9 Translation. Where RailCommodore has provided you with a translation of the English language version of the Terms, you agree that the translation is provided for your convenience only and that the English language version of the Terms will govern your relationship with RailCommodore. If there is any contradiction between the English language version of the Terms and a translation, the English language version will take precedence.

17.10 Interpretation. References to “include(s)”, “including”, or similar terms will not be read as terms of limitation, but rather as followed by the words “without limitation.” A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender. If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

17.11 Severability. If any provision of these Terms is found to be illegal, invalid, void or unenforceable, the remaining provisions will remain in full force and effect and the illegal, invalid, void or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by applicable law.

17.12 Survival. Any provision of these Terms that by its nature is reasonably intended to survive beyond termination of these Terms will survive.