



## TRANSMODAL CORPORATION CREDIT APPLICATION AND AGREEMENT

Company Name: \_\_\_\_\_ (hereafter referred to as the "Customer")

Type of Business:      Individual Partnership      Corporation      Sole proprietorship      LLC

SS or EIN #: \_\_\_\_\_ DUNS # (if known): \_\_\_\_\_

DBA/Trade/Fictitious Names Used: \_\_\_\_\_

Estimated # of Monthly Shipments: \_\_\_\_\_ Requested Credit Amount & Terms: \_\_\_\_\_

Nature of Your Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Billing Address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Main Contact person: \_\_\_\_\_ Email: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

A.P. Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

President: \_\_\_\_\_ Email: \_\_\_\_\_

Names & titles of corporate officers or partners: \_\_\_\_\_

Parent Company (if applicable): \_\_\_\_\_

Branch Offices: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Do you utilize a Factor to provide financing?      Yes      No      \*If yes, please provide Name, Address, Telephone #, Account Number and Contact Information on a separate sheet

Is there any litigation, unsatisfied judgments, or open liens, pending against you or your company as of the date of this application?      Yes      No  
\*If yes, please provide details on a separate sheet

### **References:**

Two Vender References (one must be Transportation Industry e.g. Freight Forwarder, Broker, Trucker, Airline, and Steamship line):

Reference 1:      Company Name: \_\_\_\_\_  
                         Address: \_\_\_\_\_  
                         Contact Name: \_\_\_\_\_  
                         Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Reference 2:      Company Name: \_\_\_\_\_  
                         Address: \_\_\_\_\_  
                         Contact Name: \_\_\_\_\_  
                         Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

Bank Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Account # (s): \_\_\_\_\_

### **CREDIT APPLICATION SUPPLEMENTAL TERMS AND CONDITIONS**

- Authorization:** This Credit Application will serve as Customer's authorization to release information from its bank to Transmodal Corporation (hereinafter "Company") and any creditors who may need an authorization from you, the Customer. The information contained herein is confidential. Customer supplies this information to Company for purposes of obtaining credit from the Company. This authorization permits entities contacted by the Company to FAX and/or Email back their reply to all Company credit inquiries.
- Scope of Agreement:** The parties agree not to construe this agreement together with or by the terms of any other agreement(s) in force between the parties, unless this agreement specifically incorporates such other agreement(s) by reference. In this instance, the Credit Application incorporates by reference the General Terms and Conditions, following the first page of this document, which are amended by the Company from time to time. The parties intend that this agreement is limited in scope specifically to the subject matter, terms, and conditions set forth herein. The general nature and subject matter of this agreement are the terms involving the Company's grant of credit to the Customer, the terms of payment for all services rendered, remedies in the event of late or non-payment and other matters involving the relationship between the parties as set forth in the General Terms.

I hereby certify that the foregoing statements made by me, individually and on behalf of the named customer are true. I am aware that if any of the foregoing statements made by me is false, I am subject to punishment under applicable law. I FURTHER CERTIFY THAT THE CUSTOMER HAS AUTHORIZED ME TO EXECUTE THIS CREDIT APPLICATION ON THE CUSTOMERS BEHALF, AND THAT THIS CREDIT APPLICATION IS AN OFFICIAL ACT OF THE CUSTOMER, AUTHORIZED BY THE BOARD OF DIRECTORS, GENERAL MEMBERS, PARTNERS, OWNER OR OTHER AUTHORIZED OFFICIAL(S) OF THE CUSTOMER AS THE CASE MAY BE.

***Please Scroll Down to Acknowledge, Sign & Submit***

These General Terms & Conditions constitute a legally binding contract between the Company and the Customer, effective as of the date that the Company first provides any services to the Customer, and as amended from time to time in the Company’s discretion. Company will provide amended General Terms & Conditions to Customer via email. Customs agrees that acceptance of amended General Terms & Conditions terms will be manifested through use of Company’s services after the date the amended General Terms & Conditions were provided.

1. Definitions

- (a) “Company” shall mean Transmodal Corporation, its subsidiaries, related companies, affiliates, agents and/or representatives;
- (b) “Customer” shall the recipient of the Company’s services, and the services of its agents, subsidiaries, affiliates, and parent companies.
- (c) “Documentation” shall mean all information received directly or indirectly from Customer, in any format, other than the Power of Attorney and these General Terms & Conditions and Credit Application.
- (d) “Third Parties” shall include, but are not be limited to, the following: “carriers, truck men, cart men, lighter men, forwarders, Ocean Transportation Intermediaries, customs brokers, agents, warehousemen and others to which any goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise”.
- (e) “Accrual of Claim” shall mean the date or dates that a Customer knew or should have known that the Customer had a viable claim against the Company, but in no event shall the accrual date be later than thirty (30) days after the date of the Company invoice.
- (f) “Scope of Agreement” shall refer to the inclusion or exclusion of specific terms and conditions specified in any agreement entered into between the Customer and the Company. Unless otherwise specified in writing and signed by the parties, the parties to any agreement entered into between them agree not to construe any agreement(s) in force between them by relying on the terms of any other agreement(s) in force between the parties. Notwithstanding the foregoing, the parties intend and do hereby incorporate the General Terms into ALL AGREEMENTS entered into and in force between them without exception, unless such other agreement specifically references an objectionable portion of the General Terms by paragraph number, and/or by an objectionable word or phrase surrounded by quotation marks. In such circumstances, both parties must initial that portion of any agreement between them that indicates that one or more provisions of the General Terms are NOT INCORPORATED INTO THE AGREEMENT IN QUESTION, BY REFERENCE.

(g) “Fraud.” For purposes of this General Terms agreement, the substance of which is incorporated into all agreements entered into between Customer and Company, “Fraud” means any misrepresentation of fact made by the Customer as an inducement to the Company to conduct business with the Customer, grant Customer Credit, or take any action in reliance upon statements of fact made by Customer that are later shown to be untrue.

(h) “Dishonored Checks.” For purposes of this General Terms agreement and all agreements that incorporate this agreement by reference, whenever a Customer issues a check to the Company which is dishonored by the Customer’s bank, Customer hereby agrees that such check was intentionally issued by it against a bank account with insufficient funds to cover the check in question, or against a closed account. Customer’s issuance of such a dishonored check shall be considered a Fraud against the Company, and the Company reserves all its rights and remedies in such a circumstance, including the filing appropriate civil and criminal charges against the Customer. In addition to all other charges that Customer is liable to pay in the event that it fails to pay Charges in a timely fashion or in strict accordance with the terms of any agreement between the parties, the Customer shall pay the Company a \$500.00 administrative fee for each “Dishonored Check” issued to the Company by Customer or anyone acting on Customer's behalf.

2. Company’s Obligations - Generally

- (a) Scope of Services. The Company has been retained by the Customer to provide services that are specified in an agreement entered into between the parties that details the scope of the services to be provided by the Company to the Customer, and other terms that are specific to that agreement. Such agreements may include (but are not limited to) credit applications, carrier to carrier equipment release agreements, bills of lading, invoices, statements, powers of attorney, arrival notices or other agreements governing the scope of the Company’s obligations to the Customer, and the scope of the Customer’s obligations to the Company.
- (b) Insurance. Unless required to do so in writing and confirmed to Customer in writing, the Company is under no obligation to procure any form of insurance on Customer’s behalf. Where Customer requests insurance in connection with the services to be provided by Company, and assuming the insurance requested can be procured by the Company in a timely fashion and is available in the normal course of business, Customer shall pre-pay all premiums and costs in connection with procuring such insurance. The Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of a third party to agree to a higher declared value. At Company’s discretion, any cargo to be transported by the Company on behalf of the Customer may be tendered to a third party, subject to the terms of the third party’s limitations of liability and/or terms and conditions of service.
- (c) Record-keeping. Unless otherwise agreed in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as “record keeper” or “recordkeeping agent” for Customer.
- (d) Bill of Lading. Company Obligations. Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages, and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Company shall rely upon and use the cargo weight supplied by Customer.

3. Customer’s Obligations

- (a) Customer Knows Terms Hereof. It is the responsibility of the Customer to (i) read and acknowledge that Customer has read the General Terms, (ii) acknowledge that Customer has sufficient time within which to read these General Terms and review them with Counsel of Customer's choosing, at Customer's sole discretion, cost and expense, and (iii) provide notice and copy(s) of these General Terms to all Customer agents or representatives.
- (b) Duty to Disclose Information. The Customer has an affirmative, non-delegable duty to disclose to Company any and all information required by Company to allow Company to fulfill its contractual obligations to Customer. The scope of the required information shall be in the Company’s sole discretion.
- (c) Customer Lien. Customer hereby grants Company a general and continuing lien on any and all property of Customer in Company’s actual or constructive possession

or control for all purposes, including (but not limited to) a lien in an amount sufficient to retire all debts Customer owes to Company for current and/or prior shipment(s), or monetary obligations of any kind owed by Customer to Company.

(d) Company Lien Notice. Company shall provide written notice to Customer of its intent to exercise such lien (“Lien Notice”), the exact amount of monies due and owing, as well as any on-going storage or other charges. Upon receipt of a Lien Notice, Customer shall notify all parties having an interest in Customer property of the Company’s lien rights, and the Company’s intent to exercise any such lien.

(e) Company Right to Sell Customer Property. Upon issuance of a Lien Notice to Customer, Company shall have the right to sell Customer’s property at public or private sale or auction. ("Liquidation Sale"). Customer may avoid a Liquidation Sale if, within thirty (30) days of receiving a Lien Notice, Customer irrevocably posts cash or a letter of credit as sight, in favor of Company, as security ("Security"). Security shall be in a sum sufficient to pay all monies owed Company for services rendered or to be rendered, including currently accrued and future storage charges, and all related costs of collection, as hereafter provided. If the amount due Company by Customer is the subject of a bona fide dispute, Customer may avoid Liquidation Sale by posting an appropriate bond in favor of Company. ("Bond") The Bond shall be underwritten by a financial Company rated AAA or better by Moody's rating service, and the Bond shall be in an amount no less than 110% of the market value of the total amount of money due the Company. The Bond shall guarantee the Customer's payment to the Company of monies owed as of the date of the Lien Notice, plus storage charges accrued or to be accrued, collection fees, costs and reasonable attorneys' fees (collectively the Security and/or the Bond shall be referred to herein as “Collateral”). Any sale proceeds actually received by Company following liquidation of the Collateral that exceed the amount stated in the Lien Notice, inclusive of all collection costs as hereafter described (“Net Proceeds”) shall be tendered to Customer within a reasonable time.

(f) Company Can Share Customer Data. Customer agrees to allow Company to share Customer’s aggregate sales and account data with its subsidiaries, related companies, affiliates, agents and/or representatives.

(g) Customer Indemnifies Company. Customer hereby indemnifies, defends and holds the Company harmless from, against, and in respect of any and all loss, liability, deficiency, penalty, or damage suffered or incurred by the Company resulting from any violation of U.S. law, false representation, breach of warranty, or breach of any covenant or agreement by the Customer contained in the General Terms, or in any other agreement between the parties, certificate, document, or instrument delivered to the Company by the Customer pursuant to any agreement between the parties or in connection therewith.

(h) Customer Payment; Customer Late Payment Fees. Customer agrees to (i) timely pay Company for services rendered, strictly in accord with the terms of any agreement by which the Company provides services to the Customer, and to pay Company an administrative fee of \$250.00 (in addition to all other collections costs - see below) for each late payment (“Late Payment Fee”). (ii) The Customer shall pay all Late Payment Fees assessed by the Company together with the amount of the original invoice (plus all other collection fees due) within thirty (30) days following the original due date of the invoice for which the Late Payment Fee was assessed. (iii) Failure to pay the Late Payment Fee, original invoice amount and any other collection costs within thirty (30) days of the original due date shall result in the assessment of an additional Late Payment Fee of \$250.00, payable together with the invoice amount within the following thirty (30) days. (iv) The Customer will pay Company a recurring Late Payment Fee of \$250.00 in succeeding thirty (30) day intervals as long as any Customer account remains in arrears. Customer agrees to pay all such fees until the invoice, all accrued Late Payment Fees, and other applicable collection costs are paid in full.

4. Disclaimers; Limitation of Liability.

- (a) Company Disclaimer of Warranty. Company makes no express or implied warranties or guarantees in connection with its services supplied to Customer, and no such warranties or guarantees shall be implied from the terms of this General Terms agreement, or any other agreement in force between the parties UNLESS SET FORTH IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY.
- (b) Limited Company Liability; Gross Negligence. Subject to paragraph 4(c) below, Customer agrees that in connection with all services performed, the Company shall be liable to Customer only for Company’s acts of gross negligence. Specifically, the Company shall be liable to Customer only if proven, by clear and convincing evidence, that (i) Company was contractually bound to provide a duty/service to the Customer, (ii) the Company willfully or recklessly breached the duty, (iii) the Company’s breach was the direct and proximate cause of (iv) actual, compensatory damages to Customer. All damages must be calculable in U.S.D. Moreover the maximum claims is “capped” at the actual purchase cost to Customer. For example, in the event that the Company declares the goods transported by it to be a total loss (in Company's sole discretion), the Customer's claim shall not exceed the actual purchase cost to the Customer of the property in question. The Customer must support all damage claims by an original, written commercial invoice generated by the seller of the property to the Customer, and the seller must certify to the accuracy and genuineness of the invoice. Under no circumstances will the Company be liable for damages in excess of the commercial invoice value, based upon a change in market conditions, such as increased demand for the product or decreased supply, or any consequential damages.
- (c) Optional Customer Liability Insurance. Unless the Customer purchases optional insurance as provided in this paragraph, the Customer is deemed to have waived any insurance coverage for the services provided, unless Customer maintains its’ own insurance at Customer’s sole cost. Customer may purchase insurance through the Company upon the following terms: (i) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefore, which request must be confirmed in writing by the Company prior to the Company rendering services involving the insured product(s) and/or services. (ii) Such additional liability coverage will be in effect for a given shipment or service provided a bona fide insurer accepts the risk, in writing, and the Customer pre—pays the premium required for the desired coverage. (iii) Under no circumstances will the additional liability coverage be considered to be in effect by the Company concerning a given loss if the desired coverage is rejected by the insurer selected (whether the insurer is selected by the Company or the Customer), or if the risk is rejected by the insurer prior to or after the loss, or if the Customer provides false documentation to support the loss or fails to provide the proper documentation required by the insurer as a condition to initiate the claims process, or the coverage is null and void as a matter of law. In all cases, it shall be

the Customer’s obligation to initiate the claims process under additional purchased coverage; and to comply with the claims procedure specified in the case of additional liability coverage.

(d) Maximum Company Liability; In the absence of Customer’s purchase of additional liability coverage under paragraph 4(c) above, the Company’s liability for any loss shall be limited to:

(i) For shipments covered by ¶7 of the Company ocean House Bill of Lading ("Ocean B/L"), to the terms of the Ocean B/L, the terms of which are incorporated herein by reference, but in no event in an amount greater than the minimum liability amount required by 49 U.S.C. 1300, et seq. (\$500.00 per package or customary freight unit as of January, 2009).

(ii) For shipments covered by an international air waybill, to the minimum liability amount required under the Montreal Protocol 4 to the Warsaw Convention. [see 17 Special Drawing Rights (as determined by the International Monetary Fund) per kilogram as of January 20, 2009].

(iii) For all other shipments, \$50.00 per shipment, or the minimum amount required by law, whichever is less.

(e) Limitation of Company Liability; Direct, Compensatory Damages Only. In no event shall Company be liable or responsible for anything other than direct, compensatory damages. Excluded damages include, but are not limited to, consequential, indirect, incidental, statutory, or punitive damages, even if the Company has been put on notice of the possibility that the Customer has or may sustain such damages.

5. Indemnification/Hold Harmless.

(a) Customer Indemnity of Company. Customer irrevocably covenants, promises and agrees to indemnify and defend Company and to hold Company harmless from and against any and all losses, claims, expenses, suits, damages, costs, demands or liabilities, joint or several, of whatever kind or nature which Customer or third parties may sustain or to which Customer or third parties may become subject arising out of or relating in any way to Company acting as service provider pursuant to contract including, without limitation, attorneys’ fees, costs and expenses actually incurred by Customer in defending against or enforcing any such losses, claims, expenses, suits, damages or liabilities. Notwithstanding the foregoing, the Customer may agree to purchase additional liability or other insurance to cover its losses or losses claimed by third parties, assuming such insurance is available for the shipment in question. In all such situations where Customer purchases additional liability insurance, customer shall name the Company as an additional insured with regards to claims asserted against Company by third parties, and shall supply Company with proof of such insurance in the form of a declaration sheet.

(b) Customer Standard of Care. Customer shall employ a standard of reasonable care and due diligence in all dealings with Company. The standard of care shall be equal to or greater than the standard of care employed in the industry in the State of New Jersey generally. The Customer shall represent the correctness of all information supplied by it, its’ agents or third parties acting on behalf of Customer, to Company and pertinent third parties (e.g. governmental agencies), and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer’s failure to disclose required information or providing any incorrect or false statement(s) upon which the Company reasonably relied.

6. Payment and Advancing Money; Generally.

(a) Customer Duty to Pay Company Charges. All charges for services rendered or to be rendered by Company to Customer must be paid by the Customer (or its designated agent) in advance unless the Company agrees, in writing, to extend credit to the Customer (see Credit terms below). If the Company extends credit terms to a Customer in connection with a particular transaction, the Company shall not consider such credit arrangement a waiver of this advance payment provision.

(b) When Payment Is Considered Made. Payment of Charges shall not be effective until the amount of the payment is unconditionally and irrevocably transferred to and is at the effective disposal of the Company in cleared funds. Each payment under these Credit Terms shall be made in full without deduction or deferment on account of any claims, counterclaim or set-off.

(c) Credit Payment Terms. Unless different credit terms are agreed to by the Company, in a writing signed by an Officer of the Company, where the Company has extended credit terms to the Customer, the Customer agrees that all amounts due for services rendered are payable “Net 15 days” (“Credit Period”) from the date of invoice.

(d) Non-Payment and Breach. In the event (i) the Customer’s account ("Account") becomes delinquent, and/or (ii) any applicable Customer charges are not paid within the designated Credit Period (Net 15 days unless otherwise agreed in writing); and/or (iii) the Credit Period is exceeded, or the credit limit is exceeded (see definition below) the Customer agrees that the Company (in its’ sole discretion) may employ and the Customer shall be bound by any one, or combination of two or more, or all of the following remedies:

(i) Customer shall make immediate payment of all outstanding charges due Company as a precondition for releasing any shipment or Customer property in the Company’s possession and/or control. For purposes of this paragraph, “immediate payment” shall mean payment to Company in cash, bank check or wire transfer within forty-eight (48) hours of Company sending notice of default. Note. Default Terms and conditions may also apply in this situation. See below.

(ii) Customer shall pay default interest on the balance due at the rate of 1.5 % per month, beginning with the day following the due date of all payments due, and continuing until paid in full.

(iii) Customer shall pay a Late Payment Fee as per paragraph 3(h).

(iv) Company may exercise any applicable lien rights in connection with the Customer property, including rights to public or private auction.

(v) Company may bring a collection lawsuit. In such instance, Customer agrees to pay all collection costs as detailed below, including but not limited to a liquidated damage, minimum collection fee of \$2,500.00, reasonable attorneys fees, court costs, administrative costs, interest and such other damages as may be provided in this General Terms agreement, or specifically provided in this or other agreements between the parties.

(e) Collection Costs. In the event the Account becomes delinquent and is turned over for collection, Customer agrees to pay all costs of collection including reasonable attorney fees and court costs. Customer agrees to pay a minimum collection cost of \$2,500.00.

(f) Customer Financial Condition. Customer represents that Customer is in sound financial condition from a net worth and cash flow standpoint and is able to timely meet its monetary obligation toward the Company. Customer agrees to notify the Company by certified mail of any charges in ownership or financial circumstances of

Customer and furthers agrees to be liable for all losses incurred as a result of failure to comply with said notifications.

(g) Fraud. Defined, Not Dischargeable in Bankruptcy. (i) Any misrepresentation of fact made by Customer verbally or in any writing between the parties shall be defined as Fraud for all purposes. (“Fraud”). (ii) Customer acknowledges that any act of Fraud shall make the debt represented by any agreement between the parties and this General Terms agreement NON DISCHARGEABLE IN BANKRUPTCY by the Customer's owner(s) individually, and any entity(s) owned by the Customer. This definition of Fraud is in addition to the definition recited in the “Definitions” section, and in any agreement where the term is further defined or elaborated.

(h) Disputed Invoices; Statute of Limitations: If the Customer wishes to dispute any Company invoice, its’ right to do so will be forever barred, unless the Customer complies with all of the following: (i) Customer must notify Company of a dispute in writing, by email, and by certified mail, return receipt requested, within thirty (30) days from the date of any disputed invoice; (ii) Customer must state with factual specificity the basis for disputing the invoice, including (but not limited to) the amount in dispute, the reason why the amount is disputed, the facts upon which Customer relies to show that the Company was grossly negligent in providing services, all details concerning the negligence including the provisions of any agreement between the parties that the Company allegedly breached, the factual basis for the proximate cause between the breach and any damages alleged, and all documents in Customer’s possession and control that support the claim; and (iii) the claim must be signed by the Customer’s authorized officer or agent. Failure to comply with these claim conditions shall be a complete defense to Customer’s claim. Any part of the invoice not disputed by the Customer must be paid in accordance with the invoice terms. Failure to do so shall provide Company with all remedies available to it under these General Terms in the event that an invoice is not timely paid. In the event that the Customer timely disputes an invoice and complies with all the conditions provided in this paragraph and elsewhere in this Agreement, if the parties come to a resolution of the dispute, the amount agreed upon must be paid within the agreed time. Failure to pay a disputed and later settled invoice in the time agreed upon, shall result in Company employing any of the remedies available to it in the event of a breach of this General Terms agreement, including late fees, liquidated damages, collection costs and lien remedies.

(i) Customer explicitly authorizes Company to obtain a Credit Report Summary on Client, regardless if Client requests credit or is granted credit.

7. Miscellaneous; Claim Procedure.

(a) In addition to the foregoing claim procedures (and for purposes of repeating these procedures so that the Customer understands what is required), all claims against the Company for a potential or actual loss, must include the following:

(i) Be made in writing

(ii) Be received by the Company within thirty (30) days of the Invoice date

(iii) Be delivered at the Company’s Ramsey, NJ office

(iv) Be made by persons with knowledge of events giving rise to the claim

(v) Include a statement of dates and facts supporting the Customer claim

(vi) Include the name and title of the claimant

(vii) Be signed by the claimant.

(b) An incomplete claim will result in non-compliance of the terms & conditions and shall be a complete defense to any suit or action commenced by Customer.

(c) Should any valid federal, state or local law or final determination of any administrative agency or court of competent jurisdiction affect any provision of this Agreement, the provision affected shall be automatically conformed to such law or determination and otherwise this Agreement shall continue in full force and effect.

(d) The terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of New Jersey without giving consideration to the principles of conflict of law.

(e) Customer and Company

(i) irrevocably consent to the jurisdiction of the United States District Court and the State courts of New Jersey, Bergen County;

(ii) agree that any action relating to the services performed by Company, shall only be brought in said courts;

(iii) consent to the exercise of in person jurisdiction by said courts over it, and

(iv) further agree that any action to enforce a judgment may be instituted in any jurisdiction.

(f) Terms of this contract shall not be construed against its drafter.

(g) Non-enforcement of any term of this contract by the Company shall not constitute waiver of the term.

(h) This Agreement contains the entire understanding of the parties concerning the subjects it covers, and supersedes all prior relevant understandings and representations, except to the extent that it complements other agreements between the parties, into which this Agreement is incorporated by reference.

(i) Nothing shall prevent the Company, at its sole discretion, from revising the terms and conditions of this General Terms agreement at any time, and from time to time.

(k) For customers granted credit, these Terms and Conditions control in the event of a conflict between these terms and the terms of the Credit Agreement.

(l) Each invoice that the Company tenders to Customer is an independent demand for payment, and each service provided by Company is a discrete, independent service. Customer may not set-off any sum of money or any claims regarding service provided against any other invoice tendered or service provided by Company.

(m) **Recording of Phone Conversations.** Customer explicitly consents and authorizes Company to record any telephone calls made between Customer and Company.

8. Credit, Payment Terms.

a. Place of Payment. The Customer agrees that all amounts due for services provided Customer by Company as detailed in Company invoices (“Charges”) and/or any of its subsidiaries or affiliates, are payable at 48 S Franklin Turnpike, Suite 202-204 Ramsey, NJ 07446.

b. Method of Credit Payments. Where Company has granted Customer credit (“Credit Terms”), Customer agrees that all Charges are not payable in installments, but are payable Net 15 days from the date of invoice, unless different terms are agreed to in writing, and signed by an authorized representative of the Company.

c. Credit Limit; Overdraft. The amount of credit authorized by the Company (“Credit Limit”) is the maximum amount of Charges that may be outstanding at any one time. When the total dollar amount of Charges exceeds the Credit Limit, the Customer agrees to pay the portion of the Charges exceeding the Credit Limit immediately (viz. within 48 hours), plus an overdraft fee equal to the sum recited in ¶3(h).

d. When Payment Deemed Made. Payment of Charges shall not be considered received by Company until the amount of the payment is unconditionally and irrevocably transferred to Company in cleared funds. Each payment under these

Credit Terms shall be made in full without deduction or deferment on account of any claims, counterclaim or set-off.

e. Remittance Advice.

(i) If settlement of Charges is made via bank wire transfer or bank checks, Customer shall also forward a separate remittance advice to Company outlining which invoices the payment(s) are intended to settle (“Remittance Advice”). This requirement is designed to facilitate correct application of the payment to the Charges. Company shall, at its sole discretion, apply settlement of charges according to the Customer’s remittance advice.

(ii) In the absence of Customer’s Remittance Advice, any payment received from Customer shall be applied by the Company (A) first, to all outstanding late charges, collection charges and interest due, and (B) second, to the oldest open invoices, and (C) finally, to the most recent invoices.

f. Third-Party Payors; Guarantors. If the Customer wishes to appoint a third party to settle (pay) Charges on its’ behalf, then the Customer must first obtain a written consent from the Company, signed by a Company Officer. The Credit Terms applicable to the Customer (except for the granting of credit) applies in the same manner and effect to the third party settling (paying) the Charges on Customer’s behalf, and it is the Customer's obligation to inform such third party to this effect. The Customer guarantees performance and payment of its’ Charges by the third party chosen by the Customer, and Customer shall indemnify the Company for all consequences, costs and expenses in the event of any default, claim or non-payment by the third party. Conversely, the third party chosen by Customer to settle its’ Charges with the Company assumes the Customer’s liability for the Charges assumed by the third party, and becomes the Customer’s guarantor of payment.

g. Non-Payment and Breach

In the event the Customer breaches any term of this General Terms agreement; and/or fails to timely pay any Charges in accordance with the Credit Terms; and/or exceeds the Credit Limit, the Customer agrees that the Company may, in its discretion, take any or all of the following actions, and that the Customer shall be bound thereby:

Company may require immediate payment of all outstanding Charges as a precondition for releasing any shipment or other Customer property in Company’s possession or control;

All Charges that have accrued and have not been timely paid in accordance with the Credit Terms shall begin to accrue a default interest rate of 1.5 % per month, beginning with the day following the invoice(s) due date. The interest charges shall continue to accrue until all Charges are brought current;

Company may charge a Late Payment Fee, as per paragraph 3(h);

Company may exercise its’ lien rights over Customer Property in its’ possession, and conduct public or private auctions to satisfy the outstanding Charges;

Company may commence collection proceedings, exposing Customer to all the Company remedies described in paragraphs 6 and 7.

(vi) Any misrepresentation of fact made by Customer verbally or in any other writing between the parties shall be defined as Fraud for all purposes. Customer acknowledges that any misrepresentation of fact made by Customer in this General Terms agreement and in any related agreement was intentionally made by the Customer to avoid paying the Charges properly due and owing the Company, and/or to induce the Company into granting the Customer credit. The Customer understands that debts procured by Fraud are not dischargeable in bankruptcy.

h. Customer represents that Customer is in sound financial position and is solvent from a net worth and cash flow standpoint, and is able to timely meet its monetary obligation toward Company on each and every occasion when it requests the Company provide it with services, including granting the Customer a Credit Line.

9. Cancellation.

(a) Term of Agreement. The General Terms, and any revisions made to such General terms from time to time, in the sole discretion of the Company, shall remain in full force and effect (i) whenever Company supplies services to Customer, and (ii) for so long as any Company Charges remain unpaid by the Customer. (iii) The Company may terminate this General Terms agreement and all agreements in force between the parties at the discretion of the Company, for cause or for no cause, upon the giving of thirty (30) days written notice to the Customer specifying the termination date. In such instance, the Customer shall remain bound by the terms of all agreements between the parties until such time as all Charges are paid in full in accordance with the terms of all agreements between the parties, and in the manner specified by these General Terms. (iv) The Customer may terminate any and all agreements between the parties, with or without cause, upon the giving of thirty (30) days written notice to the Company specifying the termination date, provided that all Charges due to the Company are paid in full in accordance with all applicable agreements and these General Terms. (v) In the event the Customer terminates any agreements in effect between the parties (e.g. the Credit App., the General Terms, Power of Attorney, or any other agreement), the Customer must be in full compliance with the agreements sought to be terminated. Until the Customer is in full compliance with the agreements sought to be terminated, they shall remain in full force and effect until the Customer complies with ALL AGREEMENTS BETWEEN THE PARTIES. Whether the Customer complies with the agreements between the parties is a matter to be decided in the sole discretion of the Company.

(b) Notices. Unless otherwise specified, all written Notices required or permitted to be made between the parties to any agreement must be made by first Class U.S. Mail, postage prepaid, and by email, addressed to the Company at [Accounting@Transmodal.net](mailto:Accounting@Transmodal.net). Notices sent to the Company must be addressed as specified in paragraph 8(a), attention: Accounting Department. All Notices sent by the Company to the Customer will be addressed to the address provided to the Company by the Customer at the inception of their business relationship, and to such other address as the Customer may designate in writing to the Company. This paragraph is a reminder to the Customer that the Customer is contractually obligated to immediately advise the Company of any changes in Customer’s business address, financial condition, ownership interests in the Customer or any changes to the information supplied to the Company in any agreement entered into between the parties (e.g. Credit App.).

10. General Conditions.

(a) This General Terms agreement is a fully integrated document that cannot be altered or changed, except in a writing signed by the Customer and the Company.

(b) It is the Customer’s obligation to periodically monitor the Company website for any changes to the General Terms agreement, which will, at all times, bind the Customer to its’ terms, as amended from time to time.

(c) Notices sent solely by email by Customer to the Company shall not be considered a valid notice under this General Terms agreement, or under any other agreement

between the parties, unless otherwise specifically provided in writing or agreement signed by both parties' authorized representatives.

(d) References to gender and the singular shall be deemed amended to include the opposite gender or the plural, as the circumstances may dictate.

(e) All agreements between the parties may be executed in multiple original counterparts, each of which shall have the same force and effect as if only a single version of the agreement were executed.

(f) The Customer acknowledges that it is a sophisticated business with access to professional services, such as legal and tax advice, and that Customer has availed itself of such advise, at its discretion, and cannot therefore rely on a defense to this or any agreement between the parties as being a contract of adhesion, or any defense based on a lack of understanding of the terms and conditions of any agreement, or an assertion that any term or condition is vague and therefore not understood, or that the Customer is generally unsophisticated in business agreements.

(g) If any provision of this or any other agreement between the parties is held to be unenforceable against the Customer by a Court of competent jurisdiction, the remaining provisions shall remain in full force and effect as if the agreement were drafted without the offending provision.

(h) Unless correspondence between the Company and the Customer is returned by the United States Post Office a “undeliverable”, or a facsimile transmission by Company to Customer is noted by the Company fax machine as undelivered, or an email communication between the Company and Customer is “bounced” by the relevant email service provider, it shall be conclusive proof that the Customer received the communication (in whatever form), and shall be a complete bar to Customer’s later assertion that it did not receive any given piece of communication – most especially – the Company’s invoicing and dunning letters.