Swiftly SaaS Terms of Service

These updates were effective November 10, 2021

These Software as a Service Terms and Conditions (together with any applicable Order Form issued hereunder, the "Agreement"), effective as of the date set forth on an applicable Order Form ("Effective Date"), is between Swiftly, Inc., a Delaware corporation, with an address at 2261 Market Street #4151, San Francisco, CA 94114-1612 ("Swiftly"), and the Customer named in such Order Form ("Customer"). Swiftly and Customer agree as follows:

1. SERVICES

1.1 License. Subject to the terms and conditions of this Agreement, Swiftly (a) will use commercially reasonable efforts to host, operate and maintain the services as set forth on the Order Form, which may include the Swiftly platform (the "Platform"), the Swiftly API (the "API"), and/or other services offered by Swiftly (collectively, the "Services"), (b) grants Customer a non-exclusive, non-transferable, non-sublicensable right and license to access and use the Services and (c) grants Customer a non-exclusive, non-sublicensable and non-transferable license to use (i.e., to download and display locally) Content solely for purposes of using the Services. For clarity, unless otherwise specified by Swiftly in writing, any and all rights or licenses granted by Swiftly to Customer shall only apply to Customer and not Customer's affiliates, including, without limitation, any parent, subsidiary, or other entity controlled by or under common control with Customer.

1.2 Access and Account Setup. Upon execution of an Order Form, Swiftly will provide Customer with a unique login and password to access the Services web pages which are hosted and maintained by Swiftly. Customer shall be responsible for the acts or omissions of any person who accesses the Services using logins provided to or created by Customer. Swiftly reserves the right to modify or discontinue any part of the Services at any time by giving thirty (30) days' prior written notice to Customer, provided that in the event such modification or discontinuance materially reduces the functionality of the Services, Customer may terminate this Agreement upon at least thirty (30) days' prior written notice to Swiftly, and Swiftly shall provide Customer with a pro-rated refund of any pre-paid fees for Services not performed by the effective date of termination. From time to time, Swiftly personnel may log in to the Service under Customer's account in order to maintain or improve the Service, including providing Customer assistance with technical or billing issues. Customer hereby acknowledges and consents to such access.

1.3 Service Availability. Swiftly will use commercially reasonable efforts to maintain the Service availability to send and receive data, subject to downtimes resulting from maintenance, repairs and upgrades. Swiftly will attempt to notify Customer electronically via the Service in advance of any planned downtime. Notwithstanding the foregoing, Swiftly will not be liable for any failures in the Service or any other problems which are related to (a) the Customer Content (b) outages to

any telecommunications or public Internet backbones, networks or servers, or other equipment or service outside of Swiftly's facilities or control.

1.4 Service Support. Swiftly will provide Customer with e-mail support for Customer's use of the Service during Swiftly's regular business hours. Customer agrees that Swiftly is not responsible to provide support for any issues resulting from problems, errors or inquiries related to Customer's systems or hardware.

1.5 Customer Content. As used herein, the term "Content" includes, without limitation, information, data, text, photographs, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Services, including without limitation all Customer Content (as defined below). All Content created through or submitted to the Services by Customer (collectively "Customer Content") is the sole responsibility of Customer. Customer acknowledges and agrees that Swiftly will not assume any, and hereby disclaims all, responsibility and liability for Customer Content and any modifications thereto. Customer hereby grants Swiftly a worldwide, non-exclusive, perpetual, royalty-free, fully paid-up license to use, reproduce, perform, display, modify, and distribute the Customer Content.

1.6 Use Restrictions. Except as expressly permitted in this Agreement, Customer shall not directly or indirectly (a) use any of Swiftly's Confidential Information (defined below) to create any service, software, documentation or data that is similar or competitive to any aspect of the Services, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code of the Services, or the underlying ideas, algorithms or trade secrets therein, (c) encumber, sublicense, transfer, rent, lease, time-share or use the Services in any service bureau arrangement or otherwise for the benefit of any third party, (d) copy, harvest, scrape, distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify any aspect of the Services, (e) use or allow the transmission, transfer, export, re-export or other transfer of any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction, (f) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services, (g) remove any copyright patent, trademark, or other intellectual property notices, information, and restrictions contained in any Content accessed through the Services, or (h) permit any third party to engage in any of the foregoing proscribed acts.

1.7 Limitations. Swiftly will not be responsible or liable for any failure in the Services resulting from or attributable to (a) Customer use of the Services not in accordance with this Agreement or any relevant documentation provided by Swiftly, (b) failures in any telecommunications, network or other service or equipment outside of Swiftly's or its service providers' facilities, (c) Customer's or any third party's products, services, negligence, acts or omissions, (d) any force majeure or other cause beyond Swiftly's reasonable control, or (e) unauthorized access, breach of firewalls or other hacking by third parties. In particular, Swiftly makes no representations or warranties and disclaims any and all liability with respect to any third party products and

services (collectively, "Third Party Materials") that Swiftly acquires pursuant to or at the direction of Customer. Customer acknowledges that it is solely responsible for deciding which Third Party Materials it requires Swiftly to purchase on its behalf, and Customer shall look solely to the manufacturer of such Third Party Materials in the event of any defect in the material or workmanship of such Third Party Materials. All such Third Party Materials shall be delivered directly to Customer and at no time shall Swiftly have possession of such Third Party Materials.

2. PROPRIETARY RIGHTS

2.1 Subject to the rights and licenses expressly granted hereunder, Customer shall retain all rights, title and interest (including all intellectual property and proprietary rights) in and to the Customer Content. Subject to the limited rights and licenses expressly granted hereunder, Swiftly (and its licensors) shall retain all rights, title and interest (including all intellectual property and proprietary rights) in and to the Services, the Platform, the API, all Content (excluding the Customer Content), all Swiftly trademarks, names, logos, all copies, modifications and derivative works thereof, and all rights to patent, copyright, trade secret and other proprietary or intellectual property rights therein. Additionally, all Customer (a) suggestions for correction, change or modification to the Services, (b) evaluations, and (c) other feedback, information and reports provided to Swiftly hereunder (collectively, "Feedback"), will be the property of Swiftly, and Customer shall and hereby does assign any rights in such Feedback to Swiftly. Customer agrees to assist Swiftly, at Swiftly's expense, in obtaining intellectual property protection for such Feedback, as Swiftly may reasonably request.

3. CONFIDENTIALITY

3.1 Definition. Each party agrees that the business, technical and financial information, including without limitation, the Services, the Platform, and the API, and all software, source code, inventions, algorithms, know-how and ideas and the terms and conditions of this Agreement, designated in writing as confidential or disclosed in a manner that a reasonable person would understand the confidentiality of the information disclosed, shall be the confidential property of the disclosing party and its licensors ("Confidential Information"). For the avoidance of doubt, any and all data provided to Customer through the Services (other than Customer Content) shall be considered Swiftly's Confidential Information. Confidential Information does not include information that (a) is previously rightfully known to the receiving party without restriction on disclosure, (b) is or becomes known to the general public, through no act or omission on the part of the receiving party, (c) is disclosed to the receiving party by a third party without breach of any separate nondisclosure obligation, or (d) is independently developed by the receiving party.

3.2 Confidentiality. Except for the specific rights granted by this Agreement, the receiving party shall not access, use or disclose any of the disclosing party's Confidential Information without its written consent, and shall use at least the standard of care used to protect its own Confidential

Information, but not less than reasonable care to protect the disclosing party's Confidential Information, including ensuring that its employees and contractors with access to such Confidential Information (a) have a need to know for the purposes of this Agreement and (b) have been apprised of and agree to restrictions at least as protective of the disclosing party's Confidential Information as this Agreement. Each party shall be responsible for any breach of confidentiality by its employees and contractors. Each party may disclose only the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; provided that either party may provide a copy of this Agreement or otherwise disclose its terms in connection with any legal or regulatory requirement, financing transaction or due diligence inquiry.

3.3   Required Disclosure. Nothing herein shall prevent a receiving party from disclosing any Confidential Information as necessary pursuant to any applicable court order, law, rule or regulation; provided that prior to any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party (to the extent legally permitted) in writing of such requirement to disclose and (b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

4. PAYMENTS; TAXES

4.1 Customer shall pay to Swiftly fees as set forth in an applicable Order Form in accordance with the terms therein. Past due amounts shall bear a late payment charge, until paid, at the rate of 1.5% per month or the maximum amount permitted by law, whichever is less. All payments are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments, and Customer agrees to bear and be responsible for the payment of all such charges, excluding taxes based upon Swiftly's net income.

5. LIMITED WARRANTY AND DISCLAIMERS

5.1   General. Each party represents and warrants that: (a) it has full power and authority, and has obtained all approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (b) this Agreement is legally binding upon it and enforceable in accordance with its terms; (c) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding to which it is a party or by which it may be bound; and (d) it will perform its obligations hereunder in accordance with all applicable laws.

5.2   Customer. Customer represents and warrants that (a) Customer has all rights to grant the licenses to Swiftly set forth herein, including without limitation to Customer Content, without infringement or violation of any applicable laws or third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights, and (b) Customer shall not make available through the Services any Content that is disparaging, obscene, offensive, or otherwise inappropriate or that contains any viruses or any other harmful code.

6. DISCLAIMERS

6.1 EXCEPT AS PROVIDED IN SECTION 5.1 HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, SWIFTLY HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, RELIABILITY, OR THAT THEIR OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE, AS WELL AS ALL WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

7. INDEMNIFICATION

7.1 Customer. Customer agrees to defend against and hold Swiftly harmless from any claim by a third party that arises from or is related to (a) any Customer Content, (b) Customer's use of the Services in violation of this Agreement, and to indemnify Swiftly for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claims.

7.2 Swiftly. Swiftly agrees to (a) defend against and hold Customer harmless from any claim by a third party that Services infringe a valid U.S. patent (issued as of the Effective Date), or any copyright or trade secret, of such third party and (b) indemnify Customer for settlement amounts or third party damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such claim. If any part of the Services become or, in Swiftly's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Swiftly may, at its option (1) obtain for Customer the right to continue using the Services or (2) replace or modify the Services so that such services become non-infringing. If (1) and (2) are not reasonably available to Swiftly, Swiftly may terminate this Agreement upon written notice to Customer and refund to Customer a pro-rated amount of any pre-paid fees. Swiftly shall have no liability or obligation hereunder with respect to any claim to the extent based upon (i) any use of the Services not strictly in accordance with this Agreement or in an application or environment or on a platform or with devices for which it was not designed or contemplated, (ii) modifications, alterations, combinations or enhancements of the Services not created by or for Swiftly, (iii) any Customer Content, or (iv) Customer's continuing allegedly infringing activity after being notified thereof. The foregoing states the entire liability of Swiftly, and Customer's exclusive remedy, with respect to any actual or alleged violation of intellectual property rights by the Services, any part thereof or its use or operation.

7.3 Procedures. Any claim for indemnification hereunder requires that (a) the indemnified party provides prompt written notice of the claim and reasonable cooperation, information, and assistance in connection therewith, and (b) the indemnifying party shall have sole control and authority to defend, settle or compromise such claim. The indemnifying party shall not make any

settlement that requires a materially adverse act or admission by the indemnified party without the indemnified party's written consent (such consent not to be unreasonably delayed, conditioned or withheld). The indemnifying party shall not be liable for any settlement made without its prior written consent.

8. LIMITATION OF LIABILITY

8.1 EXCEPT FOR ANY BREACH OF SECTION 3 (CONFIDENTIALITY) OR LIABILITIES TO THIRD PARTIES PURSUANT TO SECTION 7 (INDEMNIFICATION), IN NO EVENT SHALL EITHER PARTY BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) INTERRUPTION OF USE, LOSS OR INACCURACY OF DATA, LOSS OF, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS AND GOODWILL OR (C) DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE AMOUNTS PAID TO IT (IN THE CASE OF SWIFTLY) OR PAID AND PAYABLE BY IT (IN THE CASE OF CUSTOMER) HEREUNDER DURING THE SIX (6) MONTHS PRECEDING SUCH CLAIM, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN. FOR CLARITY, CUSTOMER AGREES THAT SWIFTLY SHALL HAVE NO LIABILITY FOR ANY THIRD PARTY MATERIALS.

9. TERM AND TERMINATION

9.1 Term. Unless otherwise specified in an applicable Order Form or terminated as provided herein, this Agreement shall commence on the Effective Date and shall continue for one (1) year from the Effective Date. The term shall automatically renew for successive one (1) year terms, with an annual price increase of 10% unless either party notifies the other party of its intent not to renew at least thirty (30) days prior to the end of the then current term.

9.2 Termination. This Agreement may be earlier terminated by either party (a) if the other party materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach from the non-breaching party (ten (10) days in the case on non-payment).

9.3 Effects of Termination. Upon any expiration or termination of this Agreement, all corresponding rights, obligations and licenses of the parties shall cease, except that all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) shall survive. The provisions of Sections 2 (Proprietary Rights), 3 (Confidentiality), 7 (Indemnification), 6(Disclaimers), 8 (Limitation of Liability), 10 (General Provisions) and this Section 9.3 shall survive.

10. GENERAL PROVISIONS

10.1 Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior negotiations or agreements (oral or written), between the parties regarding the subject matter hereof. Any inconsistent or additional terms on any related purchase order, confirmation or similar form, even if signed by the parties hereafter, shall have no effect under this Agreement.

10.2 Publicity. Customer hereby consents to inclusion of its name and logo in client lists and marketing materials that may be published as part of Swiftly's marketing and promotional efforts. From time to time upon Swiftly's request, Customer agrees it will provide reasonable cooperation and assistance in connection with such efforts (such as, for example, by acting as a reference, issuing press releases and writing testimonials and case studies with statements attributed to a named employee of Customer).

10.3 Modification and Waiver. No change, consent or waiver under this Agreement will be binding on either party unless made in writing and physically signed by an authorized representative of both parties. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

10.4 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.5 Governing Law. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. Exclusive jurisdiction and venue for actions related to this Agreement will be the state and federal courts located in San Francisco County, California, and both parties consent to the jurisdiction of such courts with respect to any such actions.

10.6 Remedies. Except as specifically provided otherwise herein, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity. Each party agrees that, in the event of any breach or threatened breach of Section 3, the non-breaching party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, the non-breaching party shall be entitled to seek injunctive and other equitable remedies to prevent or restrain such breach or threatened breach, without the necessity of posting any bond.

10.7 Notices. All notices under this Agreement will be in writing and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email or facsimile; the day after being sent, if

sent for next day delivery by recognized overnight delivery service; or upon receipt, if sent by certified or registered mail, return receipt requested.

10.8 Force Majeure. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence.

10.9 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by Customer without Swiftly's written consent. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto.

10.10 Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein will constitute either party as the employer, employee, agent or representative of the other party, or both parties as joint venturers or partners for any purpose.

11. INVENTORY PURCHASES

11.1 F.O.B. Shipping Point. All hardware (GPS, Accessories, etc.) is sold F.O.B. shipping point.

11.2 Sales Tax. Inventory purchases may result in sales tax. If Customer is not tax exempt, sales tax may be added to the invoice.

11.3 Warranty. Swiftly warrants to Customer that the GPS tracker and accessories provided by Swiftly (the "Product") contained in the original packaging will be free from physical defects in materials and workmanship for a period of ONE (1) YEAR from the date of purchase by the original purchaser ("Warranty Period"). If a defect arises and a valid claim is received within the Warranty Period, then as your sole remedy (and Swiftly' sole liability), Swiftly will at its option and sole discretion: 1) replace the Product with a new product that is functionally equivalent to the original, or 2) issue a credit for the price of such Product, in each case within 30 days following receipt of the returned Product.

To obtain warranty service, please contact Swiftly at (415) 483-9777 or support@goswift.ly to speak with a service agent or open a service request. Please be prepared to identify the specific Product (including its serial number) and the nature of the problem. If you ship the Product for repair or replacement, we recommend that the Product must be insured, and shipped freight prepaid and securely packaged. You must call for a Return Material Authorization Number ("RMA Number") before shipping any Product, and include the RMA Number and a description of the problem you are experiencing with the Product. Any claim under this Limited Warranty must be submitted to Swiftly before the end of the Warranty Period.

This Limited Warranty does not cover any physical defects or problems that arise out of or as a result of: (a) maintenance or repairs, modifications, alterations or tampering by anyone who is

not an authorized representative of Swiftly; (b) accident, abuse, misuse, transport, neglect, liquid contact, fire or other external causes; (c) operation, handling, storage, installation, testing or use not in accordance with any instructions provided by Swiftly and related to use or operation of the Product; (d) damage caused by use with another product; or (e) Acts of God including lightning, flood, tornado, earthquake or hurricane, in each case as determined by Swiftly.

This Limited Warranty gives you specific legal rights and you may also have other rights, which vary from state to state. To exercise your rights under this Limited Warranty, please contact Swiftly at:

MAIL
2261 Market Street #4151
San Francisco, CA 94114-1612

EMAIL
support@goswift.ly

PHONE
(415) 483-9777

GPS Tracker & Accessory Warranty: Swiftly will provide a repair or replace warranty for GPS Trackers & Accessories for up to one (1) year from the ship date.

CCPA ADDENDUM
This CCPA Addendum (this "Addendum") dated as of April 13, 2020 is incorporated into and forms a part of the Master Services Agreement (the "Agreement") entered into by and between Swiftly, Inc. ("Service Provider") and the Customer ("Customer").

The parties acknowledge and agree that Swiftly, Inc. is a service provider for the purposes of the California Consumer Privacy Act ("CCPA") and is receiving personal information from Customer pursuant to the Agreement for a business purpose. Service Provider shall not sell any such personal information. Service Provider shall not retain, use or disclose any personal information provided by Customer pursuant to the Agreement except as necessary for the specific purpose of performing the services for Customer pursuant to the Agreement, or otherwise as set forth in the Agreement or as permitted by the CCPA. The terms "personal information," "service provider," "sale," and "sell" are as defined in Section 1798.140 of the CCPA. Service Provider certifies that it understands the restrictions of this paragraph.