

Terms of Service

Effective Date: June 24, 2018

Please read these Terms of Service (the “Agreement”) carefully before using the <http://www.drift.com> website and the Drift mobile application (together, or individually, the “Services”) operated by Drift.com, Inc. (“Drift”, “us”, “we”, or “our”). Your (“Customer,” “you”, or “your”) access to and use of the Services is conditioned upon your acceptance of and compliance with this Agreement. This Agreement applies to all visitors, users and others who wish to access or use the Services. By accessing or using the Services you agree to be bound by this Agreement. If you disagree with any part of this Agreement then you do not have permission to access the Services.

1. COMMUNICATIONS

By creating an account on our service, you agree to subscribe to newsletters, marketing or promotional materials and other information we may send.

However, you may opt out of receiving any, or all, of these communications from us by following the unsubscribe link or instructions provided in any email we send.

2. PURCHASES

- a. If you wish to purchase any product or service made available through the Services (“Purchase”), you may be asked to supply certain information relevant to your Purchase including, without limitation, your credit card number, the expiration date of your credit card, your billing address, and your shipping information. You represent and warrant that: (i) you have the legal right to use any credit card(s) or other payment method(s) in connection with any Purchase;

and that (ii) the information you supply to us is true, correct and complete. The Services may employ the use of third party services for the purpose of facilitating payment and the completion of Purchases. By submitting your information, you grant us the right to provide the information to these third parties subject to our Privacy Policy.

- b. We reserve the right to refuse or cancel your order at any time for reasons including but not limited to: product or service availability, errors in the description or price of the product or service, error in your order or other reasons. We reserve the right to refuse or cancel your order if fraud or an unauthorized or illegal transaction is suspected.

3. SUBSCRIPTION TERM AND PAYMENT

- a. The Services are provided on a subscription basis for a set term (billing period) that is specified on your invoice. Unless otherwise noted on your Order Form, (i) all subscriptions automatically renew (without the need to go through the Services-interface “check-out” or execute a renewal Order Form) for additional periods equal to one (1) year or the preceding term, whichever is shorter; and (ii) the per-unit pricing during any automatic renewal term will remain the same as it was during the immediately prior term unless otherwise agreed by the parties. Either party can give the other notice of non-renewal at least thirty (30) days before the end of a subscription term to stop the subscriptions from automatically renewing. If you elect to cancel, your Services will terminate at the end of the applicable subscription term and you will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination.
- b. You agree to pay all applicable fees for the Services as set forth on the invoice unless you provide notice of a dispute regarding such fees no later than 30 days after the invoice date. Any and all payments you make to us for the Services are final and non-refundable. If we agree to accept your payment via invoice rather

than by credit card, full payment must be received within thirty (30) days from the invoice date.

- c. We will provide you with notice of non-payment of any undisputed amount due. Unless the full amount not in dispute has been paid, we may suspend your access to the Services thirty (30) days after such notice. We will not suspend the access to the Services while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. If your Services are suspended for non-payment, we may charge a re-activation fee to reinstate your access to the Services.

4. AVAILABILITY, ERRORS AND INACCURACIES

We are constantly updating product and service offerings for the Services. We may experience delays in updating information on the Drift web site regarding the Services, information in our advertising on other web sites, or information we provide as part of the Services (“Services Information”). The Services Information may contain errors or inaccuracies and may not be complete or current. Products or services may be mispriced, described inaccurately, or unavailable on the Services and we cannot guarantee the accuracy or completeness of the Services Information. We therefore reserve the right to change or update information and to correct errors, inaccuracies, or omissions at any time without prior notice.

5. CONTESTS, SWEEPSTAKES AND PROMOTIONS

Any contests, sweepstakes or other promotions (collectively, “Promotions”) made available through the Services may be governed by rules that are separate from this Agreement. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with this Agreement, the Promotion rules will apply.

6. CUSTOMER DATA

Our Services allow you to post, link, store, share and otherwise make available certain information, text, graphics, videos, or other material (“Customer Data”). You are responsible for the Customer Data that you post on or through the Services, including its legality, reliability, and appropriateness. By posting Customer Data on or through the Services, You represent and warrant that: (i) the Customer Data you post on or through the Services is yours (you own it) and/or you have the right to use it and the right to grant us the rights and license as provided in this Agreement, and (ii) that the posting of your Customer Data on or through the Services does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person or entity. We reserve the right to terminate the account of anyone found to be infringing on a copyright or otherwise in violation of this section.

You retain any and all of your rights to any Customer Data you submit, post or display on or through the Services and you are responsible for protecting those rights. We take no responsibility and assume no liability for Customer Data you or any third party posts on or through the Services. However, by posting Customer Data using the Services you grant us the right and license to transmit, use, copy, access, process, reproduce, display, and adapt the Customer Data. You agree that this license includes the right for us to make your Customer Data available to other users of the Services, who may also use your Customer Data subject to this Agreement. Drift has the right but not the obligation to monitor and edit all Customer Data provided by users. In addition, Information provided by Drift as part of provision of the Services is the property of Drift or used with permission. You may not distribute, modify, transmit, reuse, download, repost, copy, or use such information, whether in whole or in part, for commercial purposes or for personal gain, without express advance written permission from us.

7. ACCOUNTS

When you create an account with us, you guarantee that you are above the age of 18, and that the information you provide us is accurate, complete, and current at all times. Inaccurate, incomplete, or obsolete information may result in the immediate termination of your account on the Services. You are responsible for maintaining the confidentiality of your account and password, including but not limited to the restriction of access to your computer and/or account. You agree to accept responsibility for any and all activities or actions that occur under your account and/or password, whether your password is with our Services or a third-party service. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account. You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than you, without appropriate authorization. You may not use as a username any name that is offensive, vulgar or obscene. We reserve the right to refuse service, terminate accounts, remove or edit Customer Data, or cancel orders in our sole discretion.

8. COPYRIGHT POLICY

We respect the intellectual property rights of others. It is our policy to investigate any claim that Customer Data posted on the Services infringes on the copyright or other intellectual property rights of any person or entity. If you are a copyright owner, or authorized on behalf of one, and you believe that the copyrighted work has been copied in a way that constitutes copyright infringement, please submit your claim via email to legal@drift.com, with the subject line: "Copyright Infringement" and include in your claim a detailed description of the alleged infringement as detailed below, under "DMCA Notice and Procedure for Copyright Infringement Claims" You may be held accountable for damages

(including costs and attorneys' fees) for misrepresentation or bad-faith claims on the infringement of any Customer Data found on and/or through the Services on your copyright.

9. DMCA NOTICE AND PROCEDURE FOR COPYRIGHT INFRINGEMENT CLAIMS

You may submit a notification pursuant to the Digital Millennium Copyright Act (DMCA) by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- i. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright's interest;
- ii. a description of the copyrighted work that you claim has been infringed, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;
- iii. identification of the URL or other specific location on the Services where the material that you claim is infringing is located;
- iv. your address, telephone number, and email address;
- v. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- vi. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.
- vii. You may contact our Copyright Agent via email at will@drift.com or via physical mail at Attn: Will Collins, 222 Berkeley Street, 6th Floor, Boston MA 02116.

10. INTELLECTUAL PROPERTY

The Services and their original content (excluding Customer Data), features and functionality are and will remain the exclusive property of Drift and its licensors. The Services are protected by copyright, trademark, and other laws of both the United States and foreign countries. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of Drift.

11. THIRD PARTY SITES AND APPLICATIONS

The Services may contain links to third party web sites or services that are not owned or controlled by Drift. Drift has no control over, and assumes no responsibility for the content, privacy policies, or practices of any third-party web sites or services. We do not warrant the offerings of any of these entities/individuals or their websites. You acknowledge and agree that Drift shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such third-party web sites or services. We strongly advise you to read the terms and conditions and privacy policies of any third-party web sites that you visit or services that you enable.

12. CONFIDENTIALITY

Each party acknowledges that as a result of the Services provided, such party (the "Receiving Party") may receive information from the other party (the "Disclosing Party") that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("Confidential Information"). Your Confidential Information includes, but is not limited to, your Customer Data, internal business information, contact information including names and email addresses

of clients and prospective clients, and other information about clients and prospective clients. Drift's Confidential Information includes, but is not limited to, information Drift provides in its provision of the Services, its business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Drift. The Receiving Party acknowledges that the Disclosing Party's Confidential Information will remain solely the Disclosing Party's property and proprietary information of the Disclosing Party and that the Receiving Party's knowledge of the Disclosing Party's Confidential Information may enable the Receiving Party to cause the Disclosing Party's irreparable harm upon the unauthorized disclosure of such matters. The Receiving Party covenants and agrees that it will not use or appropriate for its own behalf, or disclose or communicate, directly or indirectly, any of the Disclosing Party's Confidential Information to any external third-party individual, firm, company or other entity or person without the Disclosing Party's prior written consent, except to the extent necessary to perform its obligations under the Agreement.

- a. The Receiving Party shall take all commercially reasonable steps required to protect the Disclosing Party's Confidential Information from unauthorized disclosure to any third party and shall keep the Confidential Information protected while stored with industry standard and commercially reasonable measures typically used in similar commercial sectors.
- b. The foregoing obligations of confidentiality do not apply to any information that:
(a) is made publicly known without fault of the Receiving Party; (b) is lawfully disclosed to the Receiving Party by a third-party having the right to disclose the information; (c) is produced by the Receiving Party pursuant to legal process, or under a court or government agency order to be produced, provided that the Receiving Party shall promptly notify the Disclosing Party of the request or order

so that the Disclosing Party has a timely opportunity to seek a protective order or other appropriate relief; or (d) is developed by the Receiving Party independent of the receipt of the Disclosing Party's Confidential Information. Notwithstanding anything to the contrary set forth herein, Drift may collect and use data regarding the use and performance of the Services in anonymized and aggregated form, to analyze and improve the Services and for distribution in general benchmarking data and industry reports, provided that any reported user data is aggregated and anonymized such that no personally identifying information of any individual is revealed.

- c. The Receiving Party shall, at the Disclosing Party's option, return or destroy all Confidential Information in Receiving Party's possession, and all copies thereof, at any time upon the Disclosing Party's request.

13. TERMINATION

- . If either party materially breaches any of its duties or obligations under this Agreement or an Order Form, and such breach is not cured within thirty (30) calendar days of the non-breaching party providing the breaching party of written notice of the breach, the non-breaching party may terminate this Agreement or the applicable Order Form, as applicable.
- a. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

14. INDEMNIFICATION

- . *Indemnification by Drift.* Drift will defend you and against any claim, demand, suit or proceeding made or brought against you by a third party ("Claim") alleging that your use of the Services in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights, and will indemnify and hold you harmless from any damages and costs, including attorneys' fees,

finally awarded to such third parties, as a result of, or for any amounts paid under a settlement of a Claim. The foregoing obligations do not apply with respect to any Claim based on or arising from (i) Customer Data; (ii) the Services or portions or components thereof (A) used not strictly in accordance with this Agreement or in an environment or on a platform or with devices for which it was not designed or contemplated; (B) made in whole or in part in accordance with your specifications; (C) modified, altered, combined or enhanced by a party other than Drift; or (D) combined with other products, services, processes, content or materials not supplied by Drift. The foregoing obligations also do not apply to (E) any continuing allegedly infringing activity after being notified thereof or provided modifications that would have avoided the alleged infringement; or (F) any Claims based on or arising out of your or your affiliate's breach of this Agreement or an applicable Order Form ((A) through (F) collectively, the "Excluded Claims").

- a. *Infringement.* If (i) a final injunction is obtained against your use of the Services arising from infringement or misappropriation of a third party's intellectual property rights, or (ii) in Drift's opinion the Services are likely to become the subject of a successful claim of such infringement (in both cases not arising out of an Excluded Claim), Drift may in its discretion and at no cost to you, either (i) modify the Services so that they no longer infringe or misappropriate; (ii) obtain a license for your continued use of the Services in accordance with this Agreement; or (iii) if (i) and (ii) are not commercially practicable, then Drift may terminate your subscription for the Services and refund you any prepaid fees covering the remainder of the term of the terminated subscription. Sections 14(a) and (b) state Drift's sole liability, and your exclusive remedy, for any for any matters addressed by such Sections.
- b. *Indemnification by You.* You will defend Drift against any Claim made or brought against Drift by a third party (i) alleging that Customer Data, or your use of the Services in breach of this Agreement, violates, infringes or misappropriates such

third party's intellectual property or other proprietary or privacy rights or violates applicable law, order, rule or regulation or (ii) arising from any Excluded Claims, and will indemnify and hold harmless Drift from any damages and costs finally awarded to such third parties, and all reasonable attorneys' fees, as a result of, or for any amounts paid by Drift under a settlement of, such Claim made in accordance with the Indemnification Procedure.

- c. *Indemnification Procedure.* Any claim for indemnification hereunder requires that the indemnified party (i) promptly give the indemnifying party written notice of the Claim; (ii) give the indemnifying party sole control of the defense and settlement of the Claim, provided that the indemnifying party may participate in the defense of the Claim with counsel of its choosing at its own expense, and (iii) give the indemnifying party all reasonable assistance, at the indemnifying party's expense. The indemnifying party shall not settle a Claim without written approval by the indemnified party (approval not to be unreasonably withheld) if the settlement contains an admission of any liability or wrongdoing on the part of the indemnified party.

15. LIMITATION OF LIABILITY

In no event shall Drift or its directors, employees, partners, agents, suppliers, or affiliates, be liable for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, use, goodwill, or other intangible losses, resulting from (i) your access to or use of or inability to access or use the Services; (ii) any conduct or content of any third party on the Services; (iii) any content obtained from the Services; and (iv) unauthorized access, use or alteration of your transmissions or content, whether based on warranty, contract, tort (including negligence) or any other legal theory, whether or not we have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose. You acknowledge and agree that Drift's maximum liability to you will not exceed the amount you have paid Drift in

the six (6) months immediately preceding the date on which you first assert a claim.

16. WARRANTY AND DISCLAIMER

Drift will provide the Services in a professional and workmanlike manner, but your use of the Services is at your sole risk. Except as provided herein, the Services are provided on an “AS IS” and “AS AVAILABLE” basis and without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or course of performance. Drift, its subsidiaries, affiliates, and its licensors do not warrant that a) the Services will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Services are free of viruses or other harmful components; or d) the results of using the Services will meet your requirements.

17. EXCLUSIONS

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

18. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of Massachusetts, United States, without regard to its conflict of law provisions. Our failure to enforce any right or provision of this Agreement will not be considered a waiver of those rights. If any provision of this Agreement is held to be invalid or unenforceable by a court, the remaining provisions of this Agreement will remain in effect. This Agreement constitutes the entire agreement between us regarding

our Services, and supersedes and replaces any prior agreements we might have had between us regarding the Services.

19. **POLICIES**

You agree that your use of the Services is subject to our Acceptable Use Policy and Privacy Policy, each of which is incorporated into this Agreement.

20. **CHANGES**

We reserve the right, at our sole discretion, to modify or replace this Agreement at any time. If a revision is material we will provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion. By continuing to access or use our Services after any revisions become effective, you agree to be bound by the revised Agreement. If you do not agree to the new Agreement, you are no longer authorized to use the Services.

CONTACT US

If you have any questions about this Agreement, please [contact us](#).