

SWYSH TERMS AND CONDITIONS

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Welcome, and thank you for using Swysh! These Terms and Conditions (or these “Terms”) govern your access to and use of our services, websites, and applications (collectively, our or the “Services”). The Services are provided by Lychee Labs, LLC (“Lychee Labs,” “us” or “we”).

Please read the Terms and Conditions carefully. By accessing or using the Services you agree to be bound by these Terms, our [End User License Agreement](#) (“EULA”) and our [Privacy Policy](#) (which explains how we collect and use your information). Your access to and use of the Services is conditioned on your acceptance of and compliance with these Terms.

Use of Our Services

Generally. Lychee Labs provides the Services pursuant to these Terms and the policies made available to you through the Services.

Eligibility. You represent and warrant that you are at least 13 years old (or if not, you’ve received your parent’s or guardian’s permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf).

Lychee Labs’ Intellectual Property. The Services are protected by copyright, trademark, and other U.S. and foreign laws. Using the Services does not grant you any right, title or interest in the Services or others' content in the Services. Using the Services does not grant you the right to use any branding or logos used in the Services. You agree to abide by and maintain all copyright notices, information, and restrictions contained in or displayed through the Services. You may not copy, modify, distribute, sell, or lease any part of our Services or included software, nor may you reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions or you have our written permission.

Communications. In connection with your use of the Services, we may send you service announcements, administrative messages, and other information. In some cases, you may elect not to receive certain communications.

Termination. You may stop using our Services at any time. We reserve the right to, without prior notice, change the Services; stop providing the Services or features of the Services; create usage limits for the Services at any time; and terminate users or reclaim Account usernames. We believe that you own your data and preserving your access to such data is important. If we discontinue any portion the Services, where reasonably possible, we will give you reasonable advance notice and a chance to get information out of such portion(s).

Additional Terms

In addition to these Terms & Conditions of Use, the following additional terms apply to your use of the Service. By using the Service, you agree to be bound by these additional terms (including any age restrictions applicable to use of a particular App or feature of the Service), as applicable, which are incorporated herein by reference (collectively the “**Additional Terms**”):

- The Swysh User Privacy Policy: describing Swysh’s policies with respect to the collection, use, and disclosure of personal information from you; and
- The Swysh Mobile Application End User License Agreement: governing your use of software applications you may obtain from Lychee Labs.

In the event of a conflict between the terms and conditions in this document and the terms in any of the Additional Terms, these Terms and Conditions of Use will control.

Acceptable Use

As a condition of use, you promise not to use the Services in any way that is prohibited by these Terms of Service. You are responsible for all of your activity in connection with the Services.

You will only use the Services for your own internal, personal, non-commercial use, and not on behalf of or for the benefit of any third party, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren’t authorized to use the Services. We can’t and won’t be responsible for your using the Services in a way that breaks the law.

Restrictions

Application Restrictions. You agree not to use the Application or any aspect or feature thereof for any unlawful purpose or in any way that might harm, damage, or disparage any other party. Without limiting the proceeding sentence, you agree that you will not, do or attempt to:

- copy the Application, except as expressly permitted by this license;
- modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Application;
- reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;
- remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Application, including any copy thereof;
- rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Application or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time;
- remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Application; or
- use the Application in, or in association with, the design, construction, maintenance or operation of any hazardous environments or systems, including any power generation systems; aircraft navigation or communication systems, air traffic control systems or any other transport management systems; safety-critical applications, including medical or life-support

systems, vehicle operation applications or any police, fire or other safety response systems; and military or aerospace applications, weapons systems or environments.

Updates

Lychee Labs may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the Internet either (a) the Application will automatically download and install all available Updates, or (b) you may receive notice of or be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

Privacy

Lychee Labs values your privacy. Please review our [Privacy Policy](#) to learn more about how we collect and use information about you via the Services.

Warranty Disclaimer. Neither Lychee Labs nor its licensors or suppliers makes any representations or warranties concerning any content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. We (and our licensors and suppliers) make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. Products and services purchased or offered (whether or not following such recommendations and suggestions) through the Services are provided "AS IS" and without any warranty of any kind from Company or others (unless, with respect to such others only, provided expressly and unambiguously in writing by a designated third party for a specific product). THE SERVICES AND CONTENT ARE PROVIDED BY LYCHEE LABS (AND ITS LICENSORS AND SUPPLIERS) ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability.

UNDER NO CIRCUMSTANCES WILL LYCHEE LABS, ITS OFFICERS OR DIRECTORS BE LIABLE TO YOU OR

ANYONE ELSE FOR ANY LOSS OR INJURY OR ANY DIRECT, INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE AND ANY INFORMATION AVAILABLE THEREON, EVEN IF LYCHEE LABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS INCLUDES LIABILITY FOR PHYSICAL DAMAGE TO PROPERTY OR PERSONS HARMED IN THE COURSE OF USING THE SERVICES. IN NO EVENT WILL LYCHEE LABS' TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO YOUR USE OF THE SERVICE, WHETHER IN CONTRACT OR TORT, EXCEED FIVE DOLLARS (\$5). Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

Use at Own Risk. You agree to use Swysh at your own risk. You acknowledge that Lychee Labs is not responsible for conduct or activities of any user, including but not limited to, damage to people or property as caused by gestures and movements to use the Services, and that Lychee Labs is not liable under any such circumstances. You are exclusively liable for any claims of lawsuits of any kind in any way derived from or related to conflicts with other users. You acknowledge and accept that Lychee Labs will not, under any circumstances, be liable for the acts and omissions of users, including the damages associated with such acts or omissions.

Indemnity. You agree to indemnify and hold Lychee Labs, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms.

Open Source Licenses

Our Services may contain or be provided together with open source software. Each item of open source software is subject to its own applicable license terms, which can be found in the Swysh application's documentation or the applicable help, notices, about or source files. Copyrights to the open source software are held by the respective copyright holders indicated therein.

Miscellaneous Provisions

These Terms and any action related thereto will be governed by the laws of the State of California without regard to or application of its conflict of law provisions or your state or country of residence. Unless submitted to arbitration as set forth in the following paragraph, all claims, legal proceedings or litigation arising in connection with the Services will be brought solely in San Mateo County, California, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.

For any claim (excluding claims for injunctive or other equitable relief) under these Terms where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute through binding non-appearance-based arbitration. The party electing such arbitration

shall initiate the arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, as selected by the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

These Terms are the entire and exclusive agreement between Lychee Labs and you regarding the Services (excluding any services for which you have a separate agreement with Lychee Labs that is explicitly in addition or in place of these Terms), and these Terms supersede and replace any prior agreements between Lychee Labs and you regarding the Services.

The failure of Lychee Labs to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect.

We may revise these Terms from time to time. The most current version will always be on this page (or such other page as the Services may indicate). If the revision, in our sole discretion, is material we will notify you via posting to our website or e-mail to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

Contact

The Services are provided by Lychee Labs, LLC: P.O Box 1154, Los Altos, CA 94023-1154. If you have questions about these Terms, please contact us at support@lycheelabs.com