

# The Terms of Use

## 1. Who we are and the platform services offered

1.1. Capacitate Social Solutions (registration number: 2015/124540/07) (“**Capacitate**”, “**we**”, “**us**” or “**our**”) is a successful social enterprise, that supports investors and implementing partners across the social economy. Capacitate provides support in three primary areas – M&E and data for development, impact technologies and strategic advisory. Capacitate has developed, with funding and support from various partners, several Digital Platforms (YoMobi, AlsoMe, Community Cloud, Yubuntu) to support partner organisations across the sector. Our focus is to strengthen the capacity of implementing partners such as yourself through technology so that you can be more efficient and effective in your delivery of services.

## 2. The legal terms of our relationship with you

2.1. If you decide to use our Digital Platforms, we need you to understand what our obligations are to you and what your obligations are to us. We call this document our terms of service (“our terms”). It is important that you read it carefully and understand what it says.

2.2. Our terms will apply when you register to use any of our Digital Platforms. By registering on any of the Digital Platforms, you agree to accept our terms.

2.3. When you accept our terms, you acknowledge that you have the necessary policies and procedures to ensure the privacy and confidentiality of your programme participants in accordance with the [South African Protection of Personal Information Act](#).

2.4. As we will hold some sensitive personal information for yourself, your organisation and/or your beneficiaries, we need you to be satisfied with how we will deal with your information. It is important that you are not only happy with our terms, but that you are also happy with how we hold or process your personal information. We explain how we hold or process your information in Section 3 below. Please read this section carefully, because it is important that you understand and agree to the ways in which Capacitate, and our various Digital Platforms process your personal information or that of your beneficiaries before signing up with us.

2.5. Our terms may change from time to time. When we change them, the changes will be made on Digital Platforms. Please ensure that you regularly read our terms. Although we do not promise to do so, we may give you notice of any changes we think are important.

2.6. Most of the digital platform functionalities and services are available at no charge to registered not-for-profit entities. In order to qualify to use the platforms, Capacitate may require that you provide documentary proof of your not-for-profit status. Certain advanced functionalities and features may carry a cost which will be communicated through the platform or our community managers. These charges are to ensure that the platforms remain sustainable and accessible to as many organisations as possible. We reserve the right to

waiver any or all of these charges on a case-by-case basis. For more information on the costs please see [www.capacitate.co.za/platform\\_pricing](http://www.capacitate.co.za/platform_pricing).

### 3. How we use your personal information and provide our services to you

3.1. To allow us to provide our services to you, you will need to register and create an account on our Digital Platforms (“**your account**”). For purposes of administering your account, we will communicate with you on the email address and mobile or telephone numbers you used to register with us. If you appoint representatives to use your account (“**users**”), we may communicate with them too. Once you have registered, we refer to your organisation as our “tenant”.

3.2. All information that we collect from you and your beneficiaries will be processed in accordance with the Protection of Personal Information, 4 of 2013 (“**POPIA**”). By registering with us, you consent to us collecting and processing your personal information, as well as the personal information of consenting third parties, in the ways described in these terms.

3.3. You also undertake that, where you upload or provide us with consenting third parties’ personal information e.g. your additional users (employees or representatives) or young people, you will have obtained their freely given consent to do so, and you have obtained undertakings from them that they also accept our terms. This includes sharing with them that, once registered with our Digital Platforms, we may contact them provide additional support and linkage to additional services and opportunities. If we require it, you will provide us with evidence of having obtained the required consent.

3.4. Your account may have multiple levels of users. Please ensure that admin users are trusted and responsible members of your organisation and that they have the appropriate authority to add other users to the account.

3.5 We will, at our discretion, conduct verification checks on both your organisation and your users. This may involve communicating with your organisation or users to verify the creation of the account.

3.6. The Digital Platforms may include information that is provided by third party sources e.g. Harambee and Youth Explorer, and Capacitate is not responsible for the accuracy, verification thereof or otherwise of this information. Similarly, because you are responsible for managing the content on your instance of the platforms Capacitate will not be responsible for the accuracy, verification thereof or otherwise of any information you publish through the platforms.

3.7. You are solely responsible for your User Content and for the consequences of posting or publishing it. When adding User Content, you agree and affirm that (a) you own or have the necessary licenses, rights, consents, and permissions to use and authorize Capacitate to use all patent, trademark, trade secret, copyright, or other proprietary rights in and to be used in the manner described within these Terms of Service. (ii) you have the written consent, release, and/or permission of each and every identifiable individual person in the User Content to use the name or likeness of each and every such identifiable individual person to

enable inclusion and use of the User Content in the manner described by these Terms of Service. You retain all of your ownership rights in your User Content.

3.8. By developing and submitting content through any of the Capacitate Digital Platforms , you hereby grant Capacitate a non-exclusive, royalty-free, sub-licensable and transferable license to use, reproduce, distribute, prepare derivative works of, display, content on the Digital Platforms, including without limitation for promoting and redistributing part or all of the Digital Platforms (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each organisation registered on the Capacitate Digital Platforms a non-exclusive license to access your User Content through the platforms, and to use, reproduce, distribute, prepare derivative works of, display, download your Content as permitted through the functionality of the Digital Platforms and under these Terms of Service.

3.9. Further, you agree that you will not (i) submit material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant Capacitate all of the license rights granted herein; (ii) publish falsehoods or misrepresentations that could damage Capacitate or any third party; (iii) submit material that is unlawful, obscene, defamatory, libellous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate; (iv) post advertisements or solicitations of business without explicit written consent from Capacitate: (v) impersonate another person.

3.10. Capacitate does not endorse any User Content or any opinion, recommendation, or advice expressed therein, and Capacitate expressly disclaims any and all liability in connection with User Content. Capacitate does not permit copyright infringing activities and infringement of intellectual property rights on its Digital Platforms, and Capacitate will remove all User Content if properly notified that such User Content infringes on another's intellectual property rights. Capacitate reserves the right to remove User Content without prior notice. Capacitate also reserves the right to terminate a User's access to its Digital Platforms, for repeated infringements of the terms of use. Capacitate also reserves the right to decide whether User Content is appropriate and complies with these Terms of Service for violations other than copyright infringement and violations of intellectual property law, such as, but not limited to, pornography, obscene or defamatory material, or excessive length. Capacitate may remove such User Content and/or terminate a User's access for uploading such material in violation of these Terms of Service at any time, without prior notice and at its sole discretion.

3.11. The information you provide when you register may be stored on servers located outside South Africa, but where relevant we will ensure that the holders of that information are subject to a law, binding corporate rules or binding agreement which provides an adequate level of protection similar or higher than that in South Africa.

3.12. By accepting our terms, you (and for the avoidance of doubt – your organisation) therefore agree and consent to us doing all of the above.

3.13. You have various rights under these terms and as laid out in POPIA, including the right:

3.13.1. to be notified that your personal information is being collected or that your personal information has been accessed or acquired by an unauthorised person;

3.13.2. to find out whether we hold your personal information and to request access to your personal information;

3.13.3. to request us, where necessary, to correct, destroy or delete your personal information;

3.13.4. to object, on reasonable grounds, to the processing of your personal information;

3.13.5. to object to the processing of your personal information for purposes of direct marketing, including by way of unsolicited communications;

3.13.6. not to be subject, in certain circumstances, to a decision which is based solely on the automated processing of your personal information;

3.14. We may share data with parties within our ecosystem for the purposes of tracking performance on internal and external initiatives, as well as for research purposes. The data relates to your:

3.14.1. Partner profile

3.14.2. System Usage and engagement

3.14.3. Pseudonymised User demographics

3.15. We reserve the right at any time to modify or discontinue, temporarily or permanently, any of the Digital Platforms (or any part thereof) with or without notice. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Capacitate Digital Platforms.

#### **4. Safety**

We do our best to keep our Digital Platforms safe, but we cannot guarantee it. Capacitate is not obligated to monitor the content nor control the content that users of the site may upload and post. As such, we are not responsible for inappropriate or offending material, but you are encouraged to report such abuses. We need your help to keep the user community safe, which includes the following commitments by you:

4.1. You will not post unauthorized commercial communications (such as spam) on the Digital Platforms

4.2. You will not engage in unlawful multi-level marketing, such as a pyramid scheme

- 4.3. You will not upload viruses or other malicious code.
- 4.4. You will not solicit login information or access an account belonging to someone else.
- 4.5. You will not bully, intimidate, or harass any user.
- 4.6. You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence.
- 4.7. You will not develop or operate a third-party application containing alcohol-related, dating or other mature content (including advertisements) without prior permission.
- 4.8. You will not use any of the Capacitate Digital Platforms to do anything unlawful, misleading, malicious, or discriminatory.
- 4.9. You will not do anything that could disable, overburden, or impair the proper working or appearance of any of the Capacitate Digital Platforms, such as a denial of service attack or interference with page rendering or other functionality.
- 4.10. You will not facilitate or encourage any violations of this Statement or our policies.

## **5. Your account passwords and account access**

- 5.1. Given the sensitivity of the information we hold on your behalf, it is very important that you keep control over your account. You must prevent anyone from accessing your account by not disclosing your account details i.e. usernames, passwords and/or your password reset pin, or any information associated with your account.
- 5.2. You need to make sure that you do not fall for tricks that hackers and other fraudsters may use to try to get access to your account. Learn about phishing and other such techniques. Do not click on strange links in emails and always keep your passwords strong and secure. We are not responsible for any damages or harm you may suffer if unauthorised people access your account through no fault on our part.
- 5.3. Capacitate takes all reasonable precautions to protect the security and integrity of the information you provide to us and create using the platforms, if we outsource the processing of your personal information to a third-party operator, we will ensure that the operator processes and protects your personal information using reasonable technical and organisational security measures.
- 5.4. You may not sell the right to use the Capacitate Digital Platforms or any part of it to any other person or organisation or cede or assign any of your rights under these terms without our prior written consent.
- 5.6. It is a material term of your use of the Digital Platforms that you do not infringe the right to dignity in your communications with any users on the platforms. Communications that are discriminatory, derogatory, sexist or racist will be considered a material breach of these

terms and will allow us to immediately terminate our relationship with you and remove your access to any of our Digital Platforms.

## **6. Your interaction with third-party applications while using our website or the Partner Network**

6.1. The address that you provide to Capacitate will be verified using Google Maps features and content, which is subject to the Google Maps/Google Earth [Additional Terms of Service](#) and [Google Privacy Policy](#).

## **7. Our assurances to you as a platform provider**

7.1. Given the sensitivity of your organisation's information, we will ensure that a limited number of our staff members access it. We will also ensure that they have signed appropriate non-disclosure and confidentiality agreements with us in order to further protect you.

7.2. If we notice any suspicious activity on your account, we may suspend it, notify you of this and, if necessary, report any unlawful behaviour to any authorities we are legally obliged to.

## **8. Termination of our services**

8.1. We may terminate our services, or any part of our services, at any time in response to unforeseen circumstances beyond our control or to comply with a legal requirement. We will immediately terminate our services to you if you breach our terms or if you use our services in a way that would cause a risk of harm to us, other users or third parties or where you break any applicable law.

8.2. In addition to the termination provisions set out above, and whilst the relationship between us will be for an indefinite period, both you and we may terminate our terms on one calendar month's written notice.

## **9. Liability for our services**

9.1. We will not be responsible, and you agree to absolve and indemnify us from any liability, for any loss, injury, expense or damage of any nature, and which you or any other person associated with you, who accesses, uses or relies on our services, may suffer. This is unless such liability is proved to have been caused by our negligence or gross negligence, in which case you agree that any claims brought against Capacitate shall be limited to R10,000.00 (ten thousand rand).

9.2. Given that all information that is provided to by third parties and we do not verify it, we will not be held liable for any misrepresentations that they make. You therefore agree to indemnify us against any lost profits, revenues, data, financial losses or indirect, special, consequential, exemplary, or punitive damages brought about in this regard.

9.3. You further agree to indemnify us for any lost profits, revenues, data, financial losses or indirect, special, consequential, exemplary, or punitive damages brought about in any way by use of the Capacitate Digital Platforms.

9.4. In all cases, we and our affiliates will not be liable for any loss or damage that is not reasonably foreseeable.

9.5. For purposes of this clause, the indemnities you agree to, extend to all our employees, third-party service providers, management and directors.

## **10. Intellectual property rights and domain name use**

10.1. All intellectual property on our websites and Digital Platforms, including but not limited to content, design elements, databases, text, graphics, drawings, images, icons, logos, trade names, service marks, trademarks, hyperlinks and domain name(s), whether registered or not ("**intellectual property**") is either our intellectual property, that of our affiliates or is licensed to us. Please do not use the intellectual property without getting our prior written consent. This includes storing our intellectual property or transmitting it to any other website, mailing list, electronic bulletin board, server or other storage device or network; or copying, modifying, reverse-engineering, reproducing, displaying or distributing it. If we give you consent to use our intellectual property, we will be entitled to withdraw such consent on reasonable notice, which will not be less than 30 (thirty) calendar days.

## **11. Confidentiality**

11.1. The Capacitate Digital Platforms and websites may use "cookies" (a text file with no executable code) and other technologies for data analysis and personalisation. This means that a small file may be stored locally on the device used to access the website and/or Digital Platforms in order to collect information. By registering on any of the Capacitate Digital Platforms, you agree to the use of these cookies.

11.2. We will ensure that your information is kept confidential and secure. We will use no less than industry standard security methods to protect your information. In terms of the Protection of Personal Information Act, 2013 ("**POPIA**"), by registering for this service you are obligated to maintain the same, or better, levels of confidentiality and security, and to not disclose any of our or work-seekers' confidential information to any third parties. You are also obligated to notify Capacitate immediately if there are reasonable grounds to believe that the personal information of a data subject provided to you by Capacitate has been accessed or acquired by an unauthorised person.

11.3. It is important for you to be aware that, for purposes of reporting, learning and statistics, we may pass certain information on to stakeholders such as government or funding partners. This information may include your organisation's name, usage and engagement statistics and pseudonymised user demographics. Some of these funding partners may be located outside the country, but Capacitate will ensure that they abide by similar levels of data protection as those present in South Africa.

11.4. Apart from disclosures to stakeholders, we will only disclose your information if we are required to do so in accordance with a law or if we are required to do so by an order of court. We expect a similar undertaking from you in this regard.

11.5. In the event that our relationship ends, we will require you to stop using our confidential information and intellectual property. We may request you to provide written confirmation of this.

11.6. For purposes of these terms, “confidential information” means all information, including user personal information, that you or we obtain from each other as a result of the services and these terms, including that which is clearly marked as confidential or which is obviously of a confidential nature or which is confirmed in writing to be confidential within 7 days of its disclosure.

11.7. For the purposes of these terms, “personal information” means information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person, according to the definition in POPIA.

## **12. Dispute resolution**

12.1. Our terms are governed by, and interpreted in accordance with, the laws of the Republic of South Africa.

12.2. This clause does not limit the aggrieved Party's rights or remedies that it has under this Agreement or at law and shall remain in effect even if the Agreement expires or terminates for any reason whatsoever.

12.3. Save as may be expressly provided for elsewhere in this Agreement, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be resolved in the first instance by the Parties procuring that their respective senior representatives meet to negotiate with each other in good faith in an effort to resolve such dispute. The Party declaring the dispute shall give written notice to the other Party setting out the nature of the dispute.

12.4. Any dispute which is not resolved amicably through consultations or negotiations shall, subject to the other provisions of this Agreement, be settled by arbitration in terms of the arbitration laws of the Arbitration Foundation of Southern Africa ("AFSA") for the time being in force in the Republic of South Africa.

## **13. Notices, communication and storage and protection of information**

13.1. We will need you to provide us with a physical address at which you will receive any notices or formal documents, we may need to deliver to you (the Latin term for this address is *domicilium citandi et executandi*). This address will be the address you give when you register your account.

13.2. Communications between you and us will occur mainly through electronic communications and by telephone. Please be aware that the integrity of electronic communications and telephones cannot be guaranteed.

13.3. By registering on the Capacitate Digital Platforms, you agree that Capacitate may contact you about relevant collaboration opportunities in the future.

## **14. Entire agreement**

14.1. Our terms, read with our privacy policy, regulates the entire understanding between us and you concerning our relationship.

14.2. If any part of these terms are found to be invalid, you agree that the remaining parts will still be valid and enforceable.

## **15. Waiver and assignment**

15.1. We cannot be regarded as having waived, relaxed or changed our terms unless this was done in writing and signed by one of our directors.

15.2. You may not assign either these terms or your account to any third parties, without our prior written consent.

15.3. You warrant that you are duly authorised to represent your organisation and to accept these terms on its behalf.

## **16. Legal costs**

16.1. If you are not sure of any part of our terms, please get legal advice before accepting them. We will not be responsible for any legal cost you may incur to get the advice.

## **17. Disclaimer**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

17.1. YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

17.2. WE MAKE NO WARRANTY THAT (i) THE SERVICE WILL MEET YOUR REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF THE CONTENT OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED, (vi) OR THAT THIS WEB APPLICATION AND MOBILE APPLICATION, ITS CONTENT, AND THE SERVERS ON WHICH THE WEB AND APPLICATION AND CONTENT ARE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

17.3. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

17.4. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY.

17.5. THIS APPLICATION MAY CONTAIN VARIOUS COMBINATIONS OF TEXT, IMAGES, AUDIOVISUAL PRODUCTIONS, OPINIONS, STATEMENTS, FACTS, ARTICLES, MARKET DATA OR OTHER INFORMATION CREATED BY US OR BY THIRD-PARTIES. DUE TO THE NUMBER OF SOURCES FROM WHICH CONTENT IN THIS APPLICATION IS OBTAINED, AND THE INHERENT HAZARDS OF ELECTRONIC DISTRIBUTION, THERE MAY BE DELAYS, OMISSIONS OR INACCURACIES IN SUCH CONTENT. ACCORDINGLY, SUCH CONTENT, INCLUDING THE MARKET DATA, IS FOR YOUR REFERENCE ONLY AND SHOULD NOT BE RELIED UPON BY YOU FOR ANY PURPOSE.

17.6. INFORMATION CREATED BY THIRD PARTIES THAT YOU MAY ACCESS ON THE APPLICATION OR THROUGH LINKS IS NOT ADOPTED OR ENDORSED BY CAPACITATE AND REMAINS THE RESPONSIBILITY OF SUCH THIRD PARTIES.

17.7. ORGANISATION USERS ARE OBLIGATED TO ENSURE THEIR COMPLIANCE WITH THE SOUTH AFRICAN PROTECTION OF PERSONAL INFORMATION ACT WHEN USING ANY CAPACITATE DIGITAL PLATFORMS. IT IS THE RESPONSIBILITY OF EACH ORGANISATION USING THE PLATFORMS TO ENSURE THAT THEIR BENEFICIARIES HAVE PROVIDED THE NECESSARY INFORMED CONSENT FOR THE ORGANISATION TO STORE AND PROCESS THEIR PERSONAL INFORMATION USING THE CAPACITATE PLATFORMS.

## **18. Further Information**

18.1. If you have questions about these terms and conditions, or would like to exercise your right to object to the processing of your information or stop receiving communications from Capacitate, please contact Capacitate at [info@capacitate.co.za](mailto:info@capacitate.co.za).