

# **TERMS OF USE AGREEMENT CAPYBARA**

Last updated: September 19, 2022

These Terms of Use Agreement (“Agreement”) apply to your access and use of Capybara application (“Capybara” or “Application”) provided by Digitribe Ltda. (“Digitribe” or “we”).

BE AWARE THAT SECTION 15 OF THE AGREEMENT, BELOW, CONTAINS PROVISIONS GOVERNING HOW DISPUTES THAT YOU AND WE HAVE AGAINST EACH OTHER ARE RESOLVED, INCLUDING, WITHOUT LIMITATION, ANY DISPUTES THAT AROSE OR WERE ASSERTED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT. IN PARTICULAR, IT CONTAINS AN ARBITRATION AGREEMENT WHICH WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION. THE ARBITRATION AGREEMENT: (1) YOU WILL ONLY BE PERMITTED TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF AGAINST US ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO PURSUE DISPUTES OR CLAIMS AND SEEK RELIEF IN A COURT OF LAW AND TO HAVE A TRIAL.

ANY DISPUTE, CLAIM OR REQUEST FOR RELIEF RELATING IN ANY WAY TO YOUR USE OF CAPYBARA WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE FEDERATIVE REPUBLIC OF BRAZIL, CONSISTENT WITH THE BRAZILIAN ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS EXPRESSLY EXCLUDED FROM THE AGREEMENT. If you do not agree to this Agreement, including the mandatory arbitration provision and class action waiver in Section 15, do not access or use Capybara.

## **1. ACCEPTANCE OF TERMS**

The services that Digitribe provides to User is subject to the following Agreement. Digitribe reserves the right to update the Agreement at any time without notice to User. The most current version of the Agreement can be reviewed by clicking on the "Terms of Use" hypertext link located at the bottom of our Web pages. Any changes to the Agreement will be effective immediately for new Users of the Application and will be effective thirty (30) days after posting notice of such changes on the website for existing users, provided that any material changes shall be effective for existing users upon the earlier of thirty (30) days after posting notice of such changes on the website. We may require you to provide consent to the updated Agreement in a specified manner before further use of the Application. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the Application. Otherwise, your continued use of the Application constitutes your acceptance of such changes.

- A. This Agreement, which incorporates by reference other provisions applicable to use of Capybara, including, but not limited to, supplemental terms and conditions set forth hereof ("Supplemental Terms") governing the use of certain specific material contained in the Application, sets forth the terms and conditions that apply to use of Capybara by User. By using Capybara (other than to read this Agreement for the first time), User agrees to comply with all the terms and conditions hereof. The right to use the Application is personal to User and is not transferable to any other person or entity.
- B. Digitribe shall have the right at any time to change or discontinue any aspect or feature of Capybara, including, but not limited to, content, hours of availability, and equipment needed for access or use.

## **2. ELIGIBILITY**

You must be at least 16 years of age to access or use our Services. If you are under 18 years of age, you may only access or use our Application under the supervision of a parent or legal guardian who agrees to be bound by this Agreement. If you are a parent or legal guardian of a user under the age of 18, you agree to be fully responsible for the acts or omissions of such user in connection with our Application. If you are accessing or using our Application on behalf of another person or entity, you represent that you are authorized to accept this Agreement on that person or entity's behalf and that the person or entity agrees to be responsible to us if you or the other person or entity violates this Agreement.

## **3. DESCRIPTION OF CAPYBARA**

Capybara is a contact harvesting tool that enables Users to share select email contacts from their address book with the partner organizations through its webpage. Capybara can be integrated in the form of a button on a web page. When the User clicks on the button, they are invited to sign into their email provider of choice which includes Outlook, Gmail, Yahoo and iCloud. On signing in, they see their entire contact list and can check the box next to the name of the contact with whom they want to share information about a campaign/cause. The chosen contacts receive an email inviting them to take action. The tool's core appeal is empowering the partner organizations to share their messages more effectively as Users (or "supporters") can handpick the people from their most trusted circles to notify about causes and invite them to participate.

## **4. PRIVACY**

Please refer to our [Privacy Policy](#) for information about how we collect, use and disclose information about you.

## **5. USER ACCOUNTS AND ACCOUNT SECURITY**

If you choose to make use of Capybara, you will need to use your credentials (e.g., username and password) to login to your email provider from a third-party online platform. You must maintain the security of your email provider account and promptly notify us if you discover or suspect that someone has accessed your account without your permission. If you permit others to use your e-mail provider account credentials, you are responsible for the activities of such users that occur in connection with your account.

## **6. USER CONTENT**

Capybara may allow you and other users to share content, including names and e-mails address (collectively, “User Content”). Subject to this Agreement and the Privacy Policy, you retain all rights in and to your User Content, as between you and Digitribe. Further, Digitribe does not claim ownership of any User Content that you share on or through Capybara. You grant Digitribe a nonexclusive, royalty-free, worldwide, fully paid license to use, reproduce, modify, adapt, distribute, perform and display your User Content during the term of this Agreement.

You represent and warrant that: (i) you own or otherwise have the right to use the User Content shared by you on or through the Application in accordance with the rights and licenses set forth in this Agreement; (ii) you agree to pay for all royalties, fees, and any other monies owed by reason of User Content you shared on or through the Application; and (iii) you have the legal right and capacity to enter into this Agreement in your jurisdiction.

You may not share any User Content that violates this Agreement or for which you do not have all the rights necessary to grant us the license described above. Although we have no obligation to screen, edit or monitor User Content, we may delete or remove User Content at any time and for any reason.

Capybara is not a backup service and you agree that you will not rely on the Application for the purposes of User Content backup or storage. Capybara will not be liable to you for any modification, suspension, or discontinuation of the Application, or the loss of any User Content.

## **7. PROHIBITED CONDUCT AND CONTENT**

You will not violate any applicable law, contract, intellectual property or other third-party right or commit a tort, and you are solely responsible for your conduct while accessing or using our Application. You will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Use our Application in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying Capybara or that could damage, disable, overburden or impair the functioning of our Application in any manner;

- Reverse engineer any aspect of our Application or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Application;
- Attempt to circumvent any content-filtering techniques we employ or attempt to access any feature or area of our Application that you are not authorized to access;
- Develop or use any third-party applications that interact with our Services without our prior written consent, including any scripts designed to scrape or extract data from our Services;
- Use our Services for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates this Agreement.

You may also only share User Content that is non-confidential, and you have all necessary rights to disclose. You may not share any User Content that:

- Would violate the rights of any party or otherwise create liability or violate any local, state, national or international law;
- May infringe any patent, trademark, trade secret, copyright or other intellectual or proprietary right of any party;
- Contains any private or personal information of a third party without such third party's consent;
- Contains any viruses, corrupted data or other harmful, disruptive or destructive files or content; or
- Is, in our sole judgment, objectionable or that restricts or inhibits any other person from using or enjoying our Application, or that may expose Digitribe or others to any harm or liability of any type.

In addition, although we have no obligation to screen, edit or monitor User Content, we may delete or remove User Content at any time and for any reason.

## **8. LIMITED LICENSE; COPYRIGHT AND TRADEMARK**

Our Application and the text, graphics, images, photographs, videos, illustrations, trademarks, trade names, page headers, button icons, scripts, service marks, logos, slogans, filters, user generated filters and other content contained therein (collectively, the "Capybara Content") are owned by or licensed to Digitribe and are protected under both Brazil and foreign laws. Except as explicitly stated in this Agreement, Digitribe and our licensors reserve all rights in and to our Application and the Capybara Content. You are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Application and Capybara Content for your own personal use; however, such license is subject to this Agreement and does not include any right to: (a) sell, resell or commercially use our Application or Capybara Content; (b) copy, reproduce, distribute, publicly perform or publicly display Capybara Content, except as expressly permitted by us or our licensors; (c) modify the Capybara Content, remove any proprietary rights notices or markings, or otherwise make any derivative uses of our Application or Capybara Content, except as expressly set forth in this Agreement; (d) use any data mining, robots or similar data gathering or extraction methods; or (e) use our Application or

Capybara Content other than as expressly provided in this Agreement. Any use of Application or Capybara Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted under this Agreement. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Capybara Content.

## **9. FEEDBACK**

Any questions, comments, suggestions, ideas, original or creative materials or other information you submit about Digitribe or our Application (collectively, “Feedback”), is non-confidential and we have no obligations (including without limitation obligations of confidentiality) with respect to such Feedback. You hereby grant to Digitribe a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all Feedback, and to sublicense the foregoing rights, in connection with the operation and maintenance of the Application and/or Digitribe’s business.

## **10. INDEMNIFICATION**

To the fullest extent permitted by applicable law, you will indemnify, defend, and hold harmless Digitribe and each of our respective officers, directors, agents, partners and employees (individually and collectively, the “Digitribe Parties”) from and against any loss, liability, claim, demand, damages, expenses or costs (“Claims”) arising out of or related to (a) your access to or use of our Application; (b) your User Content or Feedback; (c) your violation of this Agreement; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with our Application. You agree to promptly notify Digitribe Parties of any third-party Claims, cooperate with Digitribe Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys’ fees). You also agree that the Digitribe Parties will have control of the defense or settlement of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and Digitribe or the other Digitribe Parties.

## **11. DISCLAIMERS**

We do not control, endorse or take responsibility for any User Content or third-party content available on or linked to by our Application.

YOUR USE OF OUR APPLICATION IS AT YOUR SOLE RISK. OUR APPLICATION IS PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. In addition, Digitribe does not represent or warrant that

our Services are accurate, complete, reliable, current or error-free. While Digitribe attempts to make your access to and use of our Application safe, we cannot and do not represent or warrant that our Application or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Application.

## **12. LIMITATION OF LIABILITY**

DIGITRIBE AND THE OTHER DIGITRIBE PARTIES WILL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY - WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR OTHERWISE - FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OR LOST PROFITS, EVEN IF DIGITRIBE OR THE OTHER DIGITRIBE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL LIABILITY OF DIGITRIBE OR THE OTHER DIGITRIBE PARTIES, FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR OUR SERVICES, REGARDLESS OF THE FORM OF THE ACTION, IS LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO ACCESS OR USE OUR APPLICATION.

The limitations set forth in this section will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of Digitribe or the other Digitribe Parties or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

## **13. RELEASE**

To the fullest extent permitted by applicable law, you release Digitribe and the other Digitribe Parties from responsibility, liability, claims, demands, and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. You expressly waive any rights you may have that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

## **14. TRANSFER AND PROCESSING DATA**

By accessing or using our Application, you acknowledge and, as applicable, consent to the processing, transfer and storage of information about you in and to Brazil and other countries.

## **15. DISPUTE RESOLUTION**

Please read the following section carefully because it requires users who are Brazilian residents to arbitrate certain disputes and claims with Digitribe and limits the manner in which you can seek relief from us.

**Applicability of Arbitration Agreement.** Except for small claims disputes in which you or Digitribe seek to bring an individual action in small claims court located in the city of your billing address or disputes in which you or Digitribe seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, you and Digitribe waive your rights to a trial and to have any dispute arising out of or related to this Agreement or our Services resolved in court. This Arbitration Agreement shall apply, without limitation, to all disputes or claims and requests for relief that arose or were asserted before the effective date of this Agreement or any prior version of this Agreement.

**Arbitration Rules and Forum.** The Brazilian Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your dispute or claim to the Mediation and Arbitration Center of the Portuguese Chamber of Commerce in São Paulo (“MACPCC”). MACPCC’s rules are also available at [www.camaraportuguesa.com.br/centro-de-mediacao-e-arbitragem/](http://www.camaraportuguesa.com.br/centro-de-mediacao-e-arbitragem/). Disputes involving claims, counterclaims, or requests for relief over \$50,000, not inclusive of attorneys’ fees and interest, shall be subject to MACPCC’s most current version of the Arbitration Rules and procedures available

**Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with Digitribe.

## **16. GOVERNING LAW AND VENUE**

This Agreement and your access to and use of our Application will be governed by and construed and enforced in accordance with the laws of the Federative Republic of Brazil, consistent with the Brazilian Arbitration Act, without regard to conflict of law rules or principles that would cause the application of the laws of any other jurisdiction. The United Nations Convention for the International Sale of Goods does not apply to the Agreement. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of São Paulo and Brazil, respectively, sitting in São Paulo, SP.

## **17. ELECTRONIC COMMUNICATIONS**

By accessing or using the Application, you also consent to receive electronic communications from Digitribe (e.g., responses to your requests, questions and feedback, announcements, updates, and security alerts through a push notification or by posting notices on our Application). You agree that any notices, agreements, disclosures or other communications that we send to you

electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing.

## **18. TERMINATION**

We reserve the right, without notice and in our sole discretion, to terminate your right to access or use our Application. We are not responsible for any loss or harm related to your inability to access or use our Application.

## **19. SEVERABILITY**

If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

## **20. MISCELLANEOUS**

This Agreement constitutes the entire agreement between you and Digitribe relating to your access to and use of our Application. The failure of Digitribe to exercise or enforce any right or provision of this Agreement will not operate as a waiver of such right or provision. The section titles in this Agreement is for convenience only and have no legal or contractual effect. Except as otherwise provided herein, this Agreement is intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity.