

## Terms of Service

Welcome to [www.capcade.com](http://www.capcade.com). These Terms of Service contain the terms and conditions that govern all use of our Platform (as defined below) and Services (as defined below) and all content, services and/or products available on or through the Platform (collectively, the “Capcade Services”).

The Capcade Services are offered to you subject to your acceptance, without modification (other than Special Terms (as defined below) agreed by the parties pursuant to these Terms of Service), of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, our Privacy Policy at [www.capcade.com/privacy](http://www.capcade.com/privacy)), the Guidelines (as defined below) and any future modifications thereof, and procedures that may be published from time to time on the Platform or made available to you on or through the Capcade Services (collectively, the “Terms”). When accepted by you (as defined below), these Terms form a legally binding contract between you and Supplier (as defined below). If you are entering into these Terms on behalf of an entity, such as your employer or the company you work for, you represent that you have the legal authority to bind that entity.

PLEASE READ THESE TERMS CAREFULLY. BY REGISTERING FOR, ACCESSING, BROWSING, AND/OR OTHERWISE USING THE CAPCADE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, DO NOT ACCESS, BROWSE OR OTHERWISE USE THE PLATFORM OR THE CAPCADE SERVICES.

Supplier may, in its sole discretion, elect to suspend or terminate access to, or use of the Capcade Services to anyone who violates these Terms.

If you register for a free trial of the Capcade Services, the applicable provisions of these Terms will govern that free trial.

The original language of these Terms is English. Supplier may make available translations for convenience. In case of conflicts between the original English version and any translation, the English version shall prevail.

## **1. Definitions**

### **Account**

the primary means for accessing and using the Capcade Services, subject to payment of a Fee designated in the selected Plan;

### **Activity**

appointments, tasks, events and actions (such as call, meeting, lunch or a custom type) on a calendar that can be associated with a Deal, a person or an Organization;

### **Additional Terms**

Provisions applicable to the Client's use of a particular Feature as indicated by the Supplier in relevant areas of Capcade Services;

### **Authorization**

the set of rights and privileges on the Web Site assigned to a User by a Client;

### **Beta Service**

A Feature or functionality of Capcade Services that is in development or has not been released as a final product which Supplier has made available to Client for testing and evaluation;

### **Client**

a natural or legal person who has accepted these Terms with the Supplier;

### **Client Data**

Files and any other digital data and information, which is subjected to the Capcade Services or otherwise inserted to the System by the Client);

**Content**

any data and information available through Capcade Services or contained within the structure of the System, articles, documents, brochures, presentations, pictures, images, audiovisual works, other informational materials and any comments;

**Feature**

A function or set of functions providing a particular capability within Capcade Services as determined by the Supplier;

**Fee**

regular payment for using the activated Account;

**Files**

documents of any kind (images, spreadsheets, text files, etc.) that are inserted to the System by the Client;

**Free Trial**

temporary access for the purposes of trying out the Web Site and Capcade Services in accordance with any selected Plan without paying a Fee;

**Organization**

legal persons (such as companies) and other entities with which that Client is interacting;

**Capcade Materials**

the visual interfaces, graphics, design, systems, methods, information, computer code, software, services, “look and feel”, organization, compilation of the content, code, data, and all other elements of the Capcade Services;

**Capcade Services**

the Web Site, System, Content, Platform and all content, services and/or products available on or through the Platform;

**Capcade Inc**

Capcade Inc., a corporation established under the laws of the State of Delaware (United States of America), having its principal place of business at 8 The Green, Ste A, in the City of Dover county of Kent, Zip Code 19901, USA;

**Plan**

various criteria related to the use and functionality of the Capcade Services and on which the Fee is based;

**Platform**

the Capcade transaction orchestration application;

**Reseller**

third party entity that (i) purchases Capcade Services from Supplier and resells such Capcade Services to Clients, (ii) bills such Clients directly and (iii) provides such Clients with customer service;

**Special Terms**

any particulars, specifications and conditions by which the parties have agreed to deviate from these Terms;

**Supplier**

as the context requires, Capcade Inc, Capcade AG, or Capcade DOO; and collectively, the "Suppliers";

**System**

the integrated cloud computing solution for providing the Capcade Services, including applications, software, hardware, data bases, interfaces, associated media, documentation, updates, new releases and other components or materials provided therewith;

**User**

a natural person granted with the Authorization to use the Account on behalf of a Client;

## **Web Site**

the compilation of all web documents (including images, php and html files) made available via www.capcade.com or its sub domains or domains with identical names under other top domains and owned by Supplier.

## **2. Authority to Enter into These Terms with Supplier**

The use of the Capcade Services is subject to acceptance of these Terms. To accept these Terms for itself or on behalf of a Client, a person must have the legal capacity to do so. In the case of an individual, the individual must be at least 18 years of age or have valid authorization from his/her legal representative or custodian. In the case of a legal entity, the entity must be duly incorporated and in good standing.

The Terms are accepted as soon as one of the following occurs first:

- a. the person has received the confirmation of the creation of the Account and necessary credentials from Supplier in order to log in to his/her/its Account; or
- b. for those Capcade Services and parts of the Web Site the use of which is not dependent on creating an Account, upon the moment of gaining access to such services.

You may not, without Supplier's prior written consent, access the Capcade Services (i) for production purposes, (ii) if you are a competitor of Capcade, (iii) to monitor the availability, performance or functionality of the Capcade Services or (iv) for other benchmarking or competitive purposes.

Once accepted, these Terms remain effective until terminated as provided for herein.

### **3. Modifications to Terms**

Supplier reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time by posting such changes on or through the Platform or the Capcade Services. Please check these Terms periodically for changes. Your continued use of the Capcade Services after such changes have been posted as provided above constitutes your binding acceptance of such changes. Such amended Terms will automatically be effective upon the earlier of (i) your continued use of the Capcade Services, or (ii) 30 days from posting of such modified Terms on or through the Platform. Notwithstanding the foregoing, the resolution of any dispute that arises between you and Supplier will be governed by the Terms in effect at the time such dispute arose.

### **4. Our Responsibilities**

#### **4.1. Provision of Capcade Services**

Supplier will (a) make the Capcade Services, Content and Client Data available to a Client pursuant to these Terms, (b) provide applicable standard support for the Capcade Services to Client at no additional charge, and/or upgraded support (for an additional charge, if applicable), (c) use commercially reasonable efforts to make the Capcade Services available 24 hours a day, 7 days a week, except for:

(i) planned downtime (of which Supplier shall give advance electronic notice as provided in the Guidelines), and (ii) any unavailability caused by circumstances beyond Supplier's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem, Internet service provider failure or delay, or denial of service attack.

#### **4.2. Protection of Client Data**

Supplier will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data, as described in the Guidelines. Those safeguards will include, but will not be limited to, measures for preventing access,

use, modification or disclosure of Client Data by Supplier personnel except (a) to provide the Capcade Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 7.4 (Compelled Disclosure) below, or (c) as a Client or User expressly permit in writing.

Supplier may use service providers to perform the Services. Supplier will make commercially reasonable efforts to ensure that data transfers to service providers meet requirements applicable to Clients' processing of data and will provide information on such data transfers in these Terms for Client's consideration.

By agreeing to these Terms, the Client authorizes the Supplier (a general written authorization in the meaning of Article 28 (2) of Regulation (EU) 2016/679) to engage the following service providers for the purposes of performing the Services. Supplier shall provide 10 business days advance notice before engaging any new service providers under the Supplier's general authorization.

List of service providers processing Client Data:

**Amazon Web Services (United States of America) & Wasabi Technologies Inc. (United States of America)**

Provides hosting and content delivery network services in Europe and in the US depending on Client location. Any data transfers to affiliated undertakings or service providers are subject to the EU Commission's Standard Contractual Clauses.

**Intercom R&D Unlimited Company (Ireland)**

Service provider for customer support conversations, qualifying as a processor for Client Data if you provide Client Data in conversations with our customer support specialists.

**Twilio, Inc. (United States of America)**

Service provider for the Two Factor Authentication Feature. Client's use of this Feature involves data transfers subject to the EU Commission's Standard Contractual Clauses.

## **5. Using the Capcade Services**

### **5.1 Establishing an Account**

Features, functions, parts or elements of the Capcade Services can be used or accessed only by holders of an Account. The person who wishes to create an Account must:

- a. complete the sign-up form on the Web Site
- b. accept these Terms by clicking “Sign up” or other similar button

Each Client may have only one Account. If several persons need to use an Account on behalf of Client, Client must designate such persons as Users. Each such User shall be subject to the restrictions set forth in these Terms.

Supplier may, in its discretion, request additional information or proof of the person’s credentials. If Supplier is not certain if a User has been granted Authorization, Supplier may, in its sole discretion, prevent such User from accessing the Capcade Services.

The Client and any User associated with an Account must provide Supplier with true, accurate, current, and complete information about the Client, Users or Account and keep it up to date.

### **5.2 Logging Into an Account**

Supplier shall provide Client with a username and password (“Login Credentials”) to be used to log in to its Account unless the Client uses the single sign-on Feature or another service to log in. These Login Credentials must not be used by multiple persons. If Client has designated several Users, each User will be provided with separate Login Credentials. Client and each User are responsible for keeping confidential all login credentials associated with an Account. Client must promptly notify Supplier:

- a. of any disclosure, loss or unauthorized use of any Login Credentials;
- b. of a User’s departure from the Client’s organization;
- c. of a change in a User’s role in the Client’s organization;
- d. of any termination of a User’s right for any reason.



### **5.3 Termination of Account**

Client may terminate these Terms at any time as provided in Section 17.

Supplier shall permanently delete the Account within six months of the effective date of the termination.

### **5.4 Fees**

The use of an Account is subject to a Fee. Upon sign-up for an Account, the Client must select a Plan. Different rates apply to different Plans. The applicable Fee is charged in advance on monthly or annual payment intervals, unless agreed otherwise between parties. All Fees are non-refundable, i.e. there are no refunds or credits for periods where the Client did not use an activated Account, used it only partially, or deactivated the Account or terminated these Terms during an ongoing payment interval. If, after signing up, Client elects to upgrade to a more expensive Plan, the unused portion of any prepaid Fees shall be applied to the Fee of the more expensive Plan.

All Fees are exclusive of all taxes, levies or duties applicable under any applicable law, unless stated otherwise stated herein. Client is solely responsible for the payment of such taxes, levies or duties.

### **5.5 Changing Plans**

Any Client has the right to upgrade or downgrade a current Plan at any time by selecting a new Plan among the collection of Plans determined by the Supplier.

Downgrading of the current Plan may cause the loss of Features, functionality, or capacity of the Account, as well as the loss of Client Data.

### **5.6 Free Trial**

A new Client may be entitled to a Free Trial, unless the Client has applied for the Account as a result of an ongoing marketing campaign organized by the Supplier in co-operation with its partners. The Client is not required to provide any credit card information during

the period of Free Trial. If the period of Free Trial has expired, the Account will be automatically deactivated. In order to prevent deactivation or to reactivate the Account, the Client is required to select a suitable Plan and pay the first Fee. If the Client does not pay the first Fee within 2 weeks as of the expiry of the Free Trial, Supplier has the right to permanently delete the Account, including all Client Data therein.

In addition to the current collection of Plans, Supplier may offer special discounts and motivation schemes (for example finder's fees, etc.).

## **6. Payment**

The following provisions are applicable only if you purchase access to the Capcade Services directly from Supplier. If you purchase access to the Capcade Services through a Reseller, the payment terms are set forth in the agreement with your Reseller.

### **6.1 Direct Debit Payments**

Supplier may, if Client elects, request that Client complete a direct debit mandate to enable direct debit payments. In such cases Supplier shall comply with all applicable national rules and regulations related to direct debit payments.

### **6.2 Electronic Invoice**

If Supplier has not sought pre-authorization of your payment card, then before the end of each payment interval, Client will be issued an electronic invoice for payment of the Fee of the next payment interval. Client must pay the invoice by the due date indicated on the invoice.

### **6.3 Overage Charges**

Upon delay with any payments, Supplier may require the Client to pay interest on the delay (penalty for late payment) for the period as of the time the payment obligation falls due until conforming performance is rendered.

## **7. Client data**

### **7.1 Uploading Client Data to Platform**

If the Client uploads Client Data to the Platform, such Client Data and any processing of such Client Data must be in compliance with these Terms and applicable law. All rights, title and interest in and to the Client Data belong to the Client or third persons (including Users, persons and Organizations) whether posted and/or uploaded by you or made available on or through the Capcade Services by Supplier. By uploading Client Data to the Platform, Client authorizes Supplier to process the Client Data. The Client is responsible for ensuring that:

- a. the Client and any of the Users associated with the Account do not create, transmit, display or make otherwise available any Client Data that violates the terms of these Terms, the rights of Supplier, other Clients or Users, persons or Organizations or is harmful (for example viruses, worms, malware and other destructive codes), offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful; and
- b. Client and all of the Users associated with the Account have the necessary rights to use the Client Data, including to insert it into the Platform and process it by means of the Account.

### **7.2 No Guarantee of Accuracy**

Supplier does not guarantee any accuracy with respect to any information contained in any Client Data, and strongly recommends that you think carefully about what you transmit, submit or post to or through the Capcade Services. You understand that all information contained in Client Data is the sole responsibility of the person from whom such Client Data originated. This means that Client, and not Supplier, is entirely responsible for all Client Data that is uploaded, posted, transmitted, or otherwise made available through the Capcade Services, as well as for any actions taken by the Suppliers or other Clients or Users as a result of such Client Data.

### **7.3 Unlawful Client Data**

Supplier is not obliged to pre-screen, monitor or filter any Client Data or acts of its processing by the Client in order to discover any unlawful nature therein. However, if such unlawful Client Data or the action of its unlawful processing is discovered or brought to the attention of Supplier or if there is reason to believe that certain Client Data is unlawful, Supplier has the right to:

- a. notify the Client of such unlawful Client Data;
- b. deny its publication on the Web Site or its insertion to the System;
- c. demand that the Client bring the unlawful Client Data into compliance with these Terms and applicable law;
- d. temporarily or permanently remove the unlawful Client Data from the Web Site or Account, restrict access to it or delete it.

If Supplier is presented convincing evidence that the Client Data is not unlawful, Supplier may, at its sole discretion, restore such Client Data, which was removed from the Web Site or Account or access to which was restricted.

In addition, in the event Supplier believes in its sole discretion Client Data violates applicable laws, rules or regulations or these Terms, Supplier may (but has no obligation), to remove such Client Data at any time with or without notice.

Without limiting the generality of the preceding sentence, Capcade Inc complies with the Digital Millennium Copyright Act, and will remove Client Data from the Platform upon receipt of a compliant takedown notice.

Capcade as the data processor will assist the Client as the data controller in meeting the Client's obligations under Regulation (EU) 2016/679, providing subject access, and allowing data subjects to exercise their rights under Regulation (EU) 2016/679.

## **7.4 Compelled Disclosure**

Supplier may disclose a Client's confidential information to the extent compelled by law to do so. In such instance, Supplier will use commercially reasonable efforts to provide Client with prior notice of the compelled disclosure (to the extent legally permitted) and Client shall provide reasonable assistance, at its cost, if Client wishes to contest the disclosure. If Supplier is compelled by law to disclose Client's confidential information as part of a civil proceeding to which Supplier is a party, and Client is not contesting the disclosure, Client will reimburse Supplier for its reasonable cost of compiling and providing secure access to that confidential information.

## **8. Services**

### **8.1 Use of the Capcade Services**

Subject to these Terms, and the payment of the applicable service Fee, Supplier grants Client and its authorized users a non-exclusive, non-transferable, non-sub-licensable license to use the Capcade Services to:

- a. collect, store and organize Client Data, such as add new Persons and Organizations, create Pipelines and add Stages into these Pipelines, generate reports based on Client Data, add Deals into Stages and monitor their involvement through the next Stages, add Products to be offered for sale to Persons and Organizations; add new Users and grant them Authorizations, assign Activities to a particular User;
- b. modify and delete Client Data;
- c. customize the standard Features or functionality of the Capcade Services;
- d. receive reasonable help and guidance and from Supplier regarding the use of the Capcade Services.

If Supplier determines Client usage of the Services to be outside of the permitted and intended use as outlined herein, or bandwidth usage of the Service or any Features or functionality to be significantly excessive in relation to other Users, Supplier reserves the right to suspend respective Client Account, (or part thereof) until Client assures Supplier that Client shall refrain from further abuse of the Services.

## **8.2 Technical Support.**

Supplier shall provide reasonable technical support to Client and its authorized User at the reasonable request of the Client. Supplier shall respond to enquiries of support from a Client utilizing the contacts set forth below as soon as reasonably possible.

Responding to enquiries of Clients and Users who have accepted these Terms but do not have an Account may be less expedient, or may not occur at all.

The contacts for all enquiries of support are:

- a. instant messaging,
- b. built-in notification application on the Web Page, or
- c. e-mail: [support@capcade.com](mailto:support@capcade.com)

## **8.3 Modifications to Service**

Supplier reserves the right to modify the Capcade Services or any part or element thereof from time to time without prior notice, including, without limitation:

- a. rebranding the Capcade Services at its sole discretion;
- b. ceasing providing or discontinuing the development any particular Capcade Service or part or element of the Platform temporarily or permanently;
- c. taking such action as is necessary to preserve Supplier's rights upon any use of the Capcade Services that may be reasonably interpreted as violation of

Supplier's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity.

As applicable, Client may be notified of such modifications when logging in to the Account. Modifications, including change in applicable rates for the Capcade Services, will become effective thirty (30) days before the effective date of such modification.

If the Client does not accept the modification, the Client shall notify Supplier or Reseller (if Client purchased access to the Capcade Services from a Reseller) before the effective date of the modification, and these Terms will terminate on the effective date of the modification. The Client's continued use of the Capcade Services, or any part or element thereof, after the effective date of a modification shall indicate its consent to the modifications. Supplier shall not be liable to the Client or to any third person for any modification, suspension or discontinuance of the Capcade Services, or any part or element thereof.

#### **8.4 Additional Features**

Supplier may from time to time make additional Features available through the Capcade Services, which may be subject to Additional Terms. The Client's use of any such Feature is subject to their acceptance of Additional Terms presented within the relevant Feature or these Terms of Service.

#### **8.5 Beta Services**

Supplier may offer certain Features of functionality for the purpose of testing and evaluation ("Beta Service" or "Beta Services"). The Supplier reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any of the Beta Services with or without notice to the Client. The Client agrees that the Supplier will not be liable to the Client or to any third party for any harm related to, arising out of the Client's use of the Beta Services, or caused by the modification, suspension or discontinuance of any of the Beta Services for any reason.

## **9. Data Processing Contract**

For the purposes of Article 28 of Regulation (EU) 2016/679, these Terms constitute the data processing contract between the Client as the data controller and the Supplier as the data processor. The Client hereby instructs the Supplier to process the data as described in these Terms.

### **9.1 Subject matter and nature of processing**

The Supplier provides the Platform where the Client, as the data controller, can collect, store and organize the personal data of data subjects determined by the Client.

The Platform has been designed to work as a transaction orchestration tool but, to the extent not regulated by these Terms, the Client decides how they use the Platform.

### **9.2 Duration**

The Supplier will process data on behalf of the Client until the termination of the Capcade Services in accordance with these Terms. Upon termination, Supplier will store the Client's data for a period of six months, should the Client wish to reopen the Account to resume the use of the Capcade Services or to export Client Data, unless instructed otherwise by the Client. After that, the contents of the account may be recoverable from Supplier's backups for another three months. The Supplier deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data.

### **9.3 Parties' rights and obligations**

The Client's rights and obligations regarding Client Data are provided in sections 4 through 10 of these Terms. The Supplier ensures that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.



The Supplier takes all measures required pursuant to Article 32 of Regulation (EU) 2016/679. The Supplier undertakes to make available to the controller all information necessary to demonstrate compliance with their obligations and to allow for and contribute to audits, including inspections, conducted or mandated by the Client as the data controller.

## **10. Restrictions**

### **10.1 Prohibited Activities**

Client and its authorized Users may use the Capcade Services and any part or element thereof only in the scope, with the means and for purposes as identified in these Terms and applicable law. By way of example, neither the Client nor any User may:

- a. use the Capcade Services or any part or element thereof to commit a crime, breach any applicable law or entice or invite others to carry out such illegal actions;
- b. copy, duplicate, distribute, modify, adapt, hack, create derivative works, reverse engineer or decompile the Capcade Services or any part or element thereof, or attempt to extract the source code thereof, unless (i) it is expressly allowed under applicable law, and (ii) to the extent that the Supplier is not permitted by that applicable law to exclude or limit the foregoing rights;
- c. use the Capcade Services or any part or element thereof unless it has agreed to these Terms.

### **10.2 Certain Uses Require Supplier Consent**

The Client or any User may not, without Supplier's prior express written consent (e-mail, fax, Zoom, etc.):

- a. sell, resell, lease, license, sublicense, distribute, provide, disclose, divulge, exploit or otherwise grant Access or make the Capcade Services available in whole or in part to any third persons, unless such third person is another authorized User of the same Client;
- b. use the Capcade Services or any part or element thereof in a scope, with means or for purposes other than those for which their functionality was created;
- c. use the Capcade Services or any part or element thereof by means of programs that send them automatic enquiries or requests, unless such program has been made available by Supplier;

## **11. Privacy**

Supplier takes the privacy of its Clients and Users very seriously. Supplier's Privacy Policy at [www.Capcade.com/privacy](http://www.Capcade.com/privacy) is hereby incorporated into these Terms by reference. Please read the Privacy Policy carefully as it governs Supplier's collection, use, and disclosure of Client's or User's personal information.

## **12. Intellectual Property Rights**

### **12.1 Capcade's Intellectual Property Rights in the Capcade Services**

The Capcade Services, Capcade Materials, Capcade trade names and trademarks, and any parts or elements thereof are solely and exclusively owned and operated by Supplier and its third party vendors and hosting partners. Capcade Materials are protected by copyright, trade dress, patent, trade secrets, and trademark laws, international conventions and treaties, and all other relevant intellectual property and proprietary rights laws. Supplier, its affiliates and licensors retain all right, title and interest in such Capcade Services, Capcade Materials, Capcade trade names and trademarks, and any parts or elements. Your use of the Capcade Services and Capcade Materials, and any parts or elements does not grant to you any ownership right or intellectual property rights

therein. Any commercial or promotional distribution, publishing or exploitation of the Capcade Materials is strictly prohibited unless you have received the express prior written permission from Supplier or the otherwise applicable rights holder. Supplier reserves all rights to the Capcade Services, Capcade Materials and Capcade trade names and trademarks not expressly granted in the Terms.

## **12.2 Content Owned by Capcade**

Subject to these Terms and the payment of the applicable service Fee, Supplier grants Client and its authorized users a non-exclusive, non-transferable, non-sub-licensable license to download a single copy of any part of the Content solely for your personal, non-commercial use if you retain all copyright and proprietary notices that are contained in such part of the Content. You expressly acknowledge that you do not acquire any ownership rights by downloading any copyrighted material from or through the Platform or the Capcade Services. You shall not copy, distribute or publish any Content or any information obtained or derived therefrom except as permitted on or through the Capcade Services or as otherwise permitted by applicable law.

## **12.3 Client Data**

- a. Supplier may use Client Data in an aggregated or anonymized format for research, educational and other similar purposes. Supplier may not otherwise use or display Client Data without Client's written consent. Supplier respects your right to exclusive ownership of your Client Data. Unless specifically permitted by you, your use of the Capcade Services does not grant Supplier the license to use, reproduce, adapt, modify, publish or distribute the Client Data created by you or stored in your Account for Supplier's commercial, marketing or any similar purpose. Client expressly grants Supplier the right to use and analyze aggregate system activity data associated with use of the Capcade Services by Client and its Users for the purposes of optimizing, improving or enhancing the way the Capcade Services operate, and to create new Features

and functionality in connection with the Capcade Services in the sole discretion of Supplier.

- b. Client is solely responsible for its own Client Data and the consequences of posting or publishing them on or through the Capcade Service. In connection with Client Data, Client affirms, represents, and warrants that: (i) Client either owns its Client Data or has the necessary licenses, rights, consents, and permissions to use and authorize the Suppliers to display or otherwise use the Client Data under all patent, trademark, copyright, trade secrets, or other proprietary rights in and to your Client Data in a manner consistent with the intended Features and functionality of the Capcade Services and these Terms, and to grant the rights and license set forth in Section 11.3(a), and (ii) Client Data, Supplier's or any Capcade Licensee's use of such Client Data pursuant to these Terms, and Supplier's or any Capcade Licensee's exercise of the license rights set forth in Section 11.3(a), do not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) violate any applicable law or regulation anywhere in the world; or (c) require obtaining a license from or paying any fees and/or royalties by Supplier to any third party for the performance of any Capcade Services Client has chosen to be performed by Supplier or for the exercise of any rights granted in these Terms, unless Client and Supplier otherwise agree.

#### **12.4 Feedback**

If Client or a User provides Suppliers with any comments, bug reports, feedback, or modifications for the Capcade Services ("Feedback"), Supplier shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into the Capcade Services.

Client or User (as applicable) hereby grants Supplier a perpetual, irrevocable, nonexclusive, royalty free license under all rights necessary to incorporate, publish, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, exploit and use your Feedback for any purpose. Supplier shall have the

right to modify or remove any Feedback provided in the public areas of the Web Site if the Supplier deems, at its discretion, harmful, offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, hateful or otherwise unlawful.

### **13. Third-Party Sites, Products and Services**

The Capcade Services may include links to other websites or services ("Linked Sites") solely as a convenience to Clients. Unless otherwise specifically and explicitly indicated, Supplier does not endorse any such Linked Sites or the information, material, products, or services contained on or accessible through Linked Sites. Furthermore, Supplier makes no express or implied warranties with regard to the information, material, products, or services that are contained on or accessible through Linked Sites. ACCESS AND USE OF LINKED SITES, INCLUDING THE INFORMATION, MATERIAL, PRODUCTS, AND SERVICES ON LINKED SITES OR AVAILABLE THROUGH LINKED SITES, IS SOLELY AT YOUR OWN RISK.

Any content referred to as community provided is provided by third parties and not developed or maintained by Capcade. By using any community marked code or libraries in your software development, you acknowledge and agree that Capcade is not in any way responsible for the performance or damages caused by such community provided code or library.

### **14. Disclaimers; No Warranty**

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, THE CAPCADE SERVICES, CAPCADE MATERIAL, AND ANY CONTENT, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE CAPCADE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SUPPLIER AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT

LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, CORRECTNESS, ACCURACY, AND RELIABILITY.

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, SUPPLIER AND ITS AFFILIATES DO NOT WARRANT THAT THE CAPCADE SERVICES AND ANY CONTENT, CLIENT DATA SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE CAPCADE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE CAPCADE SERVICES AND ANY CONTENT, CLIENT DATA, SERVICES, OR FEATURES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE Capcade SERVICES OR THE SERVER THAT MAKES THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

UNLESS OTHERWISE EXPRESSLY STATED BY SUPPLIER, SUPPLIER AND ITS AFFILIATES DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PLATFORM, THE CAPCADE SERVICES, CAPCADE MATERIAL OR ANY LINKED SITES, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

THE LAWS OF CERTAIN COUNTRIES AND STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## **15. Indemnification**

You agree to defend, indemnify and hold harmless Supplier and its affiliates, and their respective directors, officers, employees and agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of your use or misuse of the Capcade Services, Capcade Materials, representations made to the Supplier, its affiliates and/or third parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants. Supplier

reserves the right, at its own expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Supplier, and you agree to cooperate with such defense of these claims.

## **16. Limitation of Liability**

### **16.1 No Liability**

Supplier shall not be liable to the Client or User for any consequences resulting from:

- a. any modifications in these Terms, calculation and rates of Fees, the Capcade Services, Capcade Material, or any part or element thereof (including but not limited to Account), including any error, permanent or temporary interruption, discontinuance, suspension or other type of unavailability of the Capcade Services or Capcade Material;
- b. deletion of, corruption of, or failure to store any Client Data;
- c. use of Client Data by the Client or any of the Users associated with the Account;
- d. upgrading or downgrading the current Plan;
- e. any disclosure, loss or unauthorized use of the login credentials of Client or any authorized User due to Client's failure to keep them confidential;
- f. the Client's use of the Account or the Capcade Services by means of browsers other than those accepted or supported by the Supplier;
- g. the application of any remedies against the Client or authorized Users by the Supplier, for example if the Client or User has committed a crime or conducted a breach of applicable law by using the Capcade Services or any part or element thereof;
- h. the differences between technologies and platforms used for access, for example if certain Features, functions, parts or elements of the Capcade Services are designed for use on a personal computer or laptop and do not function on a mobile platform or a tablet;

- i. the Supplier's application of the remedies described in these Terms, even if the reasonable grounds or legal basis for the application of these remedies turned out to be unfounded or invalid afterwards.

In addition, Supplier and its affiliates shall not be liable to the Client for any claim by any User, person, Organization or third persons against the Client arising out of the Client's failure to:

- a. provide Supplier with accurate information about the Client, Users or Account;
- b. notify Supplier of any reasons due to which a User does not have the right to use the Account on behalf of the Client;
- c. provide any Products which it has agreed to provide to such a person or Organization (whether such failure arises as a result of Supplier's negligence, breach of these Terms or otherwise);
- d. ensure the lawfulness of the Client Data;
- e. obtain the necessary rights to use the Client Data; or
- f. abide by any of the restrictions described in these Terms.

## **16.2 Limitation of Liability**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF Capcade AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER FOR THE CAPCADE SERVICES GIVING RISE TO THE LIABILITY IN THE SIX MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CLIENT'S PAYMENT OBLIGATIONS UNDER THE "PAYMENT" SECTION ABOVE.



### **16.3 Exclusion of Consequential and Related Damages**

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **17. Termination of These Terms**

### **17.1 For Convenience**

These Terms may be terminated for convenience in the following situations;

- a. by the Client by written notice at the end of the contractual period;
- b. by Supplier upon decision to end provision of the Capcade Services and close the Platform; or
- c. immediately by either party, if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors.

## **17.2 For Default**

These Terms may be terminated for default upon written notice to the other party as indicated in the “Notice” Section below:

- a. by either party in case of breach of these Terms by the other party, if the breach has not been cured within 30 days of receipt of a notice from the non-breaching party; or
- b. immediately by either party if the other party breaches its obligations, as applicable under Sections 12 [Intellectual Property Rights], 15 [Indemnification], or 10 [Restrictions] of these Terms.

## **17.3 Effect of Termination**

Upon termination of these Terms,

- a. Supplier shall deactivate and permanently delete the Account, within six months of the effective date of termination of these Terms. If the Client has specifically requested for an earlier deletion of the Account, Supplier shall fulfill such request within 1 month of its receipt of such request.
- b. Client must:
  - stop using and prevent the further usage of the Capcade Services, including, without limitation, the Platform;
  - pay any amounts owed to Supplier under these Terms; and
  - discharge any liability incurred by the Client before under these Terms prior to their termination; and
- c. The following provisions shall survive the termination of these Terms: Sections 1, 7.4, 10, 11, 12, 14, 15, 16, 18 and 19.

## **17.4 Remedies**

If Supplier terminates these Terms as a result of an uncured breach by a Client or User, Supplier is entitled to use the same or similar remedies against any other persons who use the Capcade Services in conflict with these Terms. Notwithstanding the foregoing, Supplier may also apply any other remedies available to it under the applicable law. Upon application of any remedies, the Client or User may lose Access or suffer a loss of certain Features, functions, parts or elements of the Capcade Services.

If Supplier has reasonable grounds to believe that the Client's or User's use of the Capcade Services, including the Account may harm any third persons, Supplier has the right to take adequate measures under its control to prevent, stop and eliminate the harm, where possible, in order to protect those third persons.

The Supplier has the right to suspend access to all or any part of the Service, including removing Content, at any time for violation of this Agreement or to protect the integrity, operability, and security of the Service, effective immediately, with or without notice. Unless prohibited by law or legal process or to prevent imminent harm to the Service or any third party, Supplier typically provides notice in the form of a banner or email on or before such suspension. Supplier will, in its discretion and using good faith, tailor any suspension as needed to preserve the integrity, operability, and security of the Service.

## **18. Who You Are Contracting With**

### **18.1 General**

The Supplier with whom Client is contracting depends on the domicile of the Client. The Supplier determines the domicile of the Client based on the country indicated in the billing address of the User who concludes these Terms on behalf of the Client. During the Free Trial, the Supplier determines the domicile of the Client based on the location indicated in the IP-address of the User who concludes these Terms on behalf of the Client. By accepting these Terms, the Client is contracting with the Supplier listed opposite such Client's domicile in the following table:

**Client's domicile:** United States of America

**Supplier:** Capcade Inc.

**Supplier's contact:** 8 The Green, Ste A, in the City of Dover county of Kent, Zip Code 19901, USA

**Client's domicile:** The European Union and the overseas territories of the European Union member countries, the European Economic Area, Russia, Switzerland, Turkey, Ukraine and rest of the world.

**Supplier:** Capcade AG.

**Supplier's contact:** Gesegnetmattstrasse 2, 6006 Lucerne, Switzerland

## **18.2 Governing Law and Jurisdiction**

In the event of a dispute, controversy or claim arising out of or in relation to these Terms, including but not limited to the formation, validity, breach or termination thereof, the parties shall attempt to solve the matter amicably in mutual negotiations. In the event a mutually acceptable resolution cannot be reached within a reasonable time, either party will be entitled to seek all available remedies, including legal remedies subject to the terms and conditions set forth below. Notwithstanding the foregoing and subject to the terms and conditions set forth below, either party may seek injunctive relief with respect to any disputed matter to the extent possible under applicable law. Should an amicable settlement between parties not be possible, the dispute shall be finally solved in court or by arbitration as designated herein subject to the terms and conditions set forth below. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980) shall not be applied to these Terms. Any questions relating to these Terms which are not expressly or implicitly settled by the provisions contained in these Terms shall be governed by and construed in accordance with the following:

These Terms (and any further rules, policies or guidelines incorporated by reference therein) shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any principles of conflicts of law. Unless otherwise agreed in writing by the Client and Capcade Inc, any dispute arising out of or relating to

these Terms, or the breach thereof, shall be governed by the terms set forth in this Section 18.2. City of New York, New York, to the extent Section 18.2 does not apply.

For Clients domiciled in the United States, any dispute arising from or relating to the subject matter of these Terms shall be finally settled by arbitration in New York, New York, using the English language in accordance with the Arbitration Rules and Procedures of JAMS then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator. For all purposes of these Terms, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in New York, New York. Use of the Capcade Services is not authorized in any jurisdiction that does not give effect to all provisions of these Terms, including without limitation, this section.

We each agree that we shall bring any dispute against the other in our respective individual capacities and not as a plaintiff or class member in any purported class, representative proceeding or as an association. In addition, we each agree that disputes shall be arbitrated only on an individual basis and not in a class, consolidated or representative action. The arbitrator does not have the power to vary these provisions. For Clients domiciled in the United Kingdom, all disputes arising out of or in connection with the present Terms, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") (the "Arbitration Rules") by one (1) arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, appointed in accordance with the said Arbitration Rules. The place of the arbitration shall be London (England). The language of the arbitration shall be English. The arbitration shall be commenced by a request for arbitration by the either party (the

“Claimant”), delivered to the other party (the “Respondent”). The request for arbitration shall set out the nature of the claim(s) and the relief requested. Except as otherwise specifically limited in these Terms, the arbitral tribunal shall have the power to grant any remedy or relief that it deems appropriate, whether provisional or final, including but not limited to conservatory relief and injunctive relief, and any such measures ordered by the arbitral tribunal shall, to the extent permitted by applicable law, be deemed to be a final award on the subject matter of the measures and shall be enforceable as such. Each party retains the right to apply to any court of competent jurisdiction for interim and/or conservatory measures, including pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. The existence and content of the arbitral proceedings and any rulings or awards shall be kept confidential by the parties and members of the arbitral tribunal except (i) to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, (ii) with the consent of all parties, (iii) where needed for the preparation or presentation of a claim or defense in this arbitration, (iv) where such information is already in the public domain other than as a result of a breach of this clause, or (v) by order of the arbitral tribunal upon application of a party. The arbitral tribunal may include in its award an allocation to any party of such costs and expenses, including lawyers’ fees, as the arbitral tribunal shall deem reasonable. Any award of the arbitral tribunal shall be final and binding on the parties. Enforcement of any award may be sought in any court of competent jurisdiction.

If any part of this provision is ruled to be unenforceable, then the balance of this provision shall remain in full effect and construed and enforced as if the portion ruled unenforceable were not contained herein.

Use of the Capcade Services is not authorized in any jurisdiction that does not give effect to all provisions of these Terms, including without limitation, this section.

Notwithstanding the foregoing, you and the Suppliers agree that nothing herein shall be deemed to waive, preclude, or otherwise limit either party’s right to (i) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (ii) seek injunctive relief in a court of law, or (iii) to file suit in a court of law to address intellectual property infringement claims.

## **19. General Provisions**

### **19.1 Relationship of the Parties**

The parties will act solely as independent contractors. These Terms shall not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between the Client and either Supplier, and the Client shall not represent to the contrary, whether expressly, by implication, appearance or otherwise. These Terms are not for the benefit of any third parties.

### **19.2 Severability**

If any term, condition or provision of these Terms is held to be invalid, unenforceable or illegal in whole or in part for any reason, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties. The validity and enforceability of the remaining terms, conditions or provisions, or portions of them, shall not be affected.

### **19.3 Entire Agreement**

These Terms are the entire agreement between Client and Supplier regarding Client's use of the Capcade Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

### **19.4 Assignment**

Client may not, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer these Terms or delegate any of its rights and/or obligations under these Terms without Supplier's prior written consent. Any attempted assignment, transfer or delegation without such prior written consent will be void and unenforceable.

Notwithstanding the foregoing, the Client, or its permitted successive assignees or

transferees, may assign or transfer these Terms or delegate any rights or obligations hereunder without consent: (1) to any entity controlled by, or under common control with the Client, or its permitted successive assignees or transferees; or (2) in connection with a merger, reorganization, transfer, sale of assets or product lines, or change of control or ownership of the Client, or its permitted successive assignees or transferees.

### **19.5 No Waiver**

Failure of either Party to exercise or enforce any provision of or any of its rights under these Terms shall not be deemed a waiver of future enforcement of that or any other provision or right.

### **19.6 Notices**

Except as otherwise specified in these Terms, all notices related to these Terms will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant Services system administrator designated by you.

Last update: Aug 3, 2021