

# CultureCounts

## Terms of Engagement

**1. Program Purpose.** The purpose of the Culture Counts Software Subscription Program ("Subscription Program") is to make software, services, and related documentation, materials, and information (collectively, the "Subscription Software") available to Subscription Program participants.

**2. Voluntary Use; Binding Authority.** You acknowledge that participation in the Subscription Program is voluntary and does not create a partnership, agency, or other relationship between you and Culture Counts. Unless otherwise agreed or permitted by Culture Counts in writing, you cannot share or transfer any software or other materials you receive from Culture Counts in connection with being a Subscription Program participant. Notwithstanding the restrictions in this Agreement, you are responsible for any use of the Subscription Software accessed or enabled through your user ID and password. If any Subscription Software used or accessed after the date hereof is accompanied by additional or separate terms, you agree that such separate or additional terms shall govern your use of such Subscription Software, including in the event such terms conflict with the terms of this Agreement.

**3. License.** Subject to your compliance with the terms and conditions of this Agreement, Culture Counts hereby grants you personal, limited, non-exclusive, non-transferable, non-assignable use of the Subscription Software, and only in connection with this Subscription Program. This license does not grant you the right to use or access the Subscription Software for any other purpose, or to disclose, reproduce, distribute, modify or create derivative works of, the Subscription Software.

**4. Certain Restrictions.** You shall not, directly or indirectly through others: (a) license, grant, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Subscription Software or any audio or visual elements, documents, works, products or services contained in the Subscription Software or made available to you under this Agreement in the course of using the Subscription Software (the "Content") in any way; (b) translate, reverse engineer, decompile, disassemble, attempt to derive or access the source code of the Subscription Software; (c) modify or make derivative works based upon the Subscription Software or the Content; (d) create Internet "links" to the Subscription Software or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (e) make any copies of any Content provided or which you are granted access to in connection with the

Subscription Software. You certify that the Subscription Software will only be used in connection with the Subscription Program. Culture Counts retains ownership of all Subscription Software, and except as expressly set forth herein, no other rights or licenses are granted or to be implied under any Culture Counts intellectual property.

**5. Payment Terms.** You agree to pay to Culture Counts the Subscription Project Fees specified in the Proposal for the Subscription Software. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.

**6. Ownership; Proprietary Rights.** Culture Counts retains all right, title and interest in and to the Subscription Software and all other information provided to you in connection with the Subscription Program, including any related intellectual property rights. All modifications, improvements, enhancements, adjustments, error corrections or updates thereto and all Feedback and Systems Information (as such terms are defined in Section 7) will become and shall remain the exclusive property of Culture Counts, and you hereby assign to Culture Counts all right, title and interest therein. You agree to do such other acts as Culture Counts may request to accomplish the foregoing assignment and to enable the complete vesting of all such rights in Culture Counts or its nominee. The Culture Counts name, logo and names associated with the Subscription Program are trademarks of Culture Counts, and no right or license is granted to use such names or logos. You acknowledge that, except as specifically provided under this Agreement, no right, title or interest in any property, intellectual property or other materials or information is granted to you.

## **7. Feedback; User Groups; Collection of Software and Systems Information.**

**a.** As part of the Subscription Program, Culture Counts will provide you with the opportunity to submit your opinions, recommendations, suggestions and ideas, regarding the quality and usability of the Subscription Software, including with respect to any enhancements or modifications, (collectively, "Feedback") to Culture Counts. Culture Counts may request this information from you directly through features in the Subscription Software as well as through email, web questionnaires, telephone contact and other mechanisms. By agreeing to this Agreement, you agree that Culture Counts may contact you from time to time about the Subscription Program, and you hereby consent to receive such communications. You agree that Culture Counts will

be free to use any Feedback you provide for any purpose.

**b.** Culture Counts may also provide you with the ability to participate in user forums about the Subscription Software through user groups established at websites provided to you directly by Culture Counts (“User Groups”). All information shared on User Groups shall be considered Feedback owned exclusively by Culture Counts. Except for the limited act of sharing Feedback regarding the quality and usability of the Subscription Software directly with other authorised users within User Groups or for providing Feedback directly to Culture Counts and no other person, you acknowledge and agree that you shall not disclose, publish, blog, transmit, or otherwise disseminate any Feedback or other information regarding the quality or usability of the Subscription Software.

**c.** In addition to Feedback and in order to test and improve the Subscription Software, you acknowledge that Culture Counts and its affiliates will be collecting, using, storing, processing and analysing (collectively, “Collecting”) diagnostic, technical, usage, and/or related information from the Subscription Software, software that interfaces with the Subscription Software, and the hardware, systems and equipment that are running Subscription Software as part of this Subscription Program (“Systems Information”). The information that would be Collected includes, but is not limited to defect information, bug reports, usage information, diagnostic information, various unique system or hardware identifiers, information about your hardware, networks, systems and application software, and peripherals. By accessing or using Subscription Software, you acknowledge and agree that Culture Counts and its affiliates have your permission to Collect all such information and use it as set forth above.

## **8. Confidential Information; Non- Disparagement.**

**a.** You agree that the Subscription Software and any information concerning the Subscription Software (including its nature and existence, features, functionality, and screen shots), the User Groups, and any other information disclosed by Culture Counts to you in connection with the Subscription Program will be considered and referred to in this Agreement as “Confidential Information.” Confidential Information shall not include information: (i) that is generally available to the public other than through breach of this Agreement; (ii) that is rightfully disclosed to you by a third party without any associated obligation of confidentiality; or (iii) that can be proven was independently developed by you without use of any Confidential

Information. For avoidance of doubt, Feedback and Systems information shall be Confidential Information. All Confidential Information remains the sole property of Culture Counts and you have no implied licenses or other rights in the Confidential Information not specified in this Agreement.

**b.** Except as expressly permitted in Section 7.b, you agree that you will not disclose, publish, or otherwise disseminate any Confidential Information except as expressly permitted or agreed to in writing by Culture Counts. You further agree to take all necessary precautions to prevent any unauthorised use, disclosure, publication, or dissemination of Confidential Information, including preventing access to or display of the Subscription Software to third parties.

**c.** To the extent that you are required to disclose any Confidential Information pursuant to applicable law, regulation or legal process, you will: (i) promptly notify Culture Counts of such potential disclosure prior to disclosure thereof in order to give Culture Counts an opportunity to seek a protective order or other appropriate remedy; (ii) disclose only the minimum amount of Confidential Information legally required; (iii) use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed; and (iv) upon any compelled disclosure, continue to maintain the confidentiality of such Confidential Information in accordance with the terms of this Agreement.

**d.** You will promptly notify Culture Counts of any unauthorised disclosure of or access to Confidential Information and hereby acknowledge that unauthorised disclosure or use of Confidential Information could cause irreparable harm and significant injury to Culture Counts that may be difficult to ascertain. Accordingly, you agree that Culture Counts will have the right to seek immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have in any court of competent jurisdiction.

**e.** The terms of the Culture Counts Privacy Policy located at [www.culturecounts.cc](http://www.culturecounts.cc) and any other policies referenced therein shall apply to all data Collected by Culture Counts hereunder, and you hereby agree to comply with the terms thereof, except to the extent such Privacy Policy conflicts with the terms hereof, in which case this Agreement shall govern. Culture Counts reserves the right to modify its Privacy Policy in its reasonable discretion from time to time. Culture Counts may notify all users of important announcements regarding the operation of the Subscription Software.

**9. Third Party Materials, Interactions and Links.**

**a.** Portions of the Subscription Software may include third party software and other copyrighted material. Acknowledgements, licensing terms, and disclaimers for such material are contained or referenced in the Subscription Software, and your use of such material is governed by such respective terms. The right to use the Subscription Software pursuant to this Agreement does not provide any license or agreement that may be required by such third-party Culture Counts prior to your use of or access to the Subscription Software. Culture Counts shall have no responsibility with regard to the selection, performance, or use of these vendors or products.

**b.** During use of the Subscription Software, Culture Counts may provide links to third party sites to you. Any such activity, and any terms, conditions, warranties or representations associated with such links are solely between you and the applicable third-party. Culture Counts and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party.

**10. Term and Termination.** The term of this Agreement shall continue for a period of 12 months unless earlier terminated in accordance with this Section 10 (the "Termination Date"). This Agreement may be terminated by you without cause in at any time upon notice to Culture Counts; provided that you may not terminate unless you have ceased all use of the Subscription Software and returned or destroyed all Confidential Information provided to or obtained by you. Culture Counts may terminate this agreement with 7 days prior written notice if you breach the terms of this Agreement and fail to remedy such breach within 14 days following notice from Culture Counts. Upon termination of this Agreement, you shall immediately cease using and shall not attempt further access to the Subscription Software.

**11. Warnings, Disclaimers and Limitations.**

**a.** The Subscription Software may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Culture Counts is not responsible for any delays, failures, losses or other damage resulting from such problems.

**b.** You agree to back-up all data and information on your networks, systems and peripherals prior to your participation in the Subscription Program.

**c.** The Subscription Software is provided to you as-is and you assume all risks and all costs associated with testing, installation, access of use of the Subscription Software. This includes without limitation all back-up and recovery expenses, costs incurred for the use of the Subscription Software on any networks, systems and peripherals and any damage to any equipment, software information or data. Culture Counts make no and hereby disclaims any and all warranties, representations or guarantees, express or implied concerning the Subscription Software, including but not limited to any fitness for purpose, merchantability, completeness, non-infringement or that the Subscription Software will be uninterrupted or error-free.

**d.** Except to the extent permitted by law, in no event will Culture Counts be liable for any indirect, special incidental or consequential damages. In no event will Culture Counts' total liability to you for all damages exceed the amount of Culture Counts' standard price for a single organisation license to use the Subscription Software for 1 year.

**12. Miscellaneous.**

**a.** Notices. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) if to you, the date sent to the email address provided by you in establishing your account, or (ii) if to Culture Counts, the date sent to Culture Counts to the following email address [admin@culturecounts.cc](mailto:admin@culturecounts.cc)

**b.** Modifications. This Agreement may be modified by you only upon a writing signed by both parties. This Agreement may be modified by Culture Counts in accordance with the terms hereof.

**c.** Governing Law; Venue; Rules for Certain Government Agencies and Accredited Institutions. This Agreement will be governed by and construed in accordance with the laws of the State of Western Australia, without regard for conflicts of laws. Except as may be otherwise permitted pursuant to Section 8.b, the parties further submit to and waive any objections to personal jurisdiction of and venue in Western Australia.

**d.** Severability. If any provision or clause in this Agreement shall be found or held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable, or, if it cannot be so amended without materially altering the intention of the parties, such provision shall be



*stricken, and the remainder of this Agreement shall remain in full force and effect.*

**e. Waiver.** *No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought.*

**f. Assignment.** *The provisions of this Agreement shall be binding on and inure to the benefit of each party's successors and assigns. Culture Counts may assign this Agreement with notice to you. You may not assign this Agreement without the prior written consent of Culture Counts.*

**g. Entire Agreement.** *This Agreement and the terms in the Subscription Project Proposal consists of the entire understanding and agreement of the parties and supersedes any and all prior agreements of the parties with respect to the subject matter hereof.*

**h. Headings.** *All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.*

