

CultureTalk Certification Partner Licensing Agreement

This CultureTalk Certification Program Terms and Conditions (the “Agreement”) is between CultureTalk and the consultant agreeing to these terms (“Consultant”). This Agreement governs access and use of the CultureTalk Certification Program, Consultant features of the CultureTalk software (“Software”), and Consultant Support Services (together, the “Consultant Services”). By clicking “I Accept,” you confirm that you have read these Terms and Conditions and that you agree to be bound by them.

1. Consultant Obligations.

a. Fees. In exchange for the Consultant Services, Consultant will pay CultureTalk all applicable certification fees prior to the Consultant’s attendance at a CultureTalk Certification Program (the “Program”). [A current listing of certification fees can be found here.](#)

b. Provision of Consultant Services. Upon successful completion of the Program, Consultant becomes a Certified CultureTalk Consultant, and the Consultant may access and use the Consultant Services in accordance with this Agreement, the Terms of Use, Privacy Policy, and any other applicable agreements. Consultant will comply with laws and regulations applicable to Consultant’s use of the Consultant Services, if any.

c. Unauthorized Use & Access. Consultant will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Consultant Services. Consultant will promptly notify CultureTalk of any unauthorized use of or access to the Consultant Services.

d. Restricted Uses. Consultant will not: (i) sell, resell, or lease the Consultant Services; (ii) use the Consultant Services for activities where use or failure of the Consultant Services could lead to physical damage, death, or personal injury; or (iii) reverse engineer the Consultant Services, nor attempt nor assist anyone else to do so, unless this restriction is prohibited by law.

e. Third Party Requests.

i. “Third Party Request” means a request from a third party for records relating to a Consultant’s use of the Consultant Services including information in or from a Consultant’s account. Third-Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent permitting a disclosure.

ii. Consultant is responsible for responding to Third-Party Requests via its own access to information. Consultant will seek to obtain information required to respond to Third-Party Requests and will contact CultureTalk only if it cannot obtain such information despite diligent efforts.

iii. CultureTalk will make commercially reasonable efforts, to the extent allowed by law and by the terms of the Third-Party Request, to: (A) promptly notify Consultant of CultureTalk’s receipt of a Third-Party Request; (B) comply with Consultant’s commercially reasonable requests

regarding its efforts to oppose a Third-Party Request; and (C) provide Consultant with information or tools required for Consultant to respond to the Third-Party Request (if Consultant is otherwise unable to obtain the information). If Consultant fails to promptly respond to any Third-Party Request, then CultureTalk may, but will not be obligated to do so.

f. Third-Party Services. If Consultant uses any third-party service with the Consultant Services: (i) CultureTalk will not be responsible for any act or omission of the third party, CultureTalk Certification Program Terms and Conditions, including the third party's access to or use of Consultant Data; and (ii) CultureTalk does not warrant or support any service provided by the third party.

2. CultureTalk's Services.

a. Facilities and Data Processing. CultureTalk will use, at a minimum, industry standard technical and organizational security measures to transfer, store, and process Consultant Data. These measures are designed to protect the integrity of Consultant Data and guard against the unauthorized or unlawful access to, use, and processing of Consultant Data. Further details can be found in CultureTalk's Privacy Policy available at <https://www.culturetalk.com/privacy-policy>. CultureTalk's Privacy Policy may be changed from time to time and any such changes will apply to this Agreement, the Services and the Consultant. Consultant agrees that CultureTalk may transfer, store, and process Consultant Data in locations other than Consultant's country. "Consultant Data" means Stored Data and Account Data. "Stored Data" means the files and structured data submitted to the Services by Consultant. "Account Data" means the account and contact information submitted to the Services by Consultant.

b. Modifications to the Services. a. CultureTalk may update the Consultant Services from time to time. If CultureTalk changes the Services in a manner that materially reduces their functionality, CultureTalk will inform Consultant via the email address associated with the Consultant's account.

3. On Completion of Certification.

a. Certification Requirements. Certification will only be complete upon: (i) Consultant's successful completion of the CultureTalk Certification Program, as determined by CultureTalk; and (ii) payment of the certification fee as set forth in Section 1(a). Consultant shall not be entitled to Access, defined below, until Consultant completes the CultureTalk Certification Program. Consultants can choose between Partner Membership Packages which are billed annually or monthly. Partner Membership Packages each include different benefits and discounts which are [detailed here](#). Partner Membership Packages will auto-renew annually on the first day of renewal month. Consultants can cancel or change their subscription at any time with 30-days notice. Consultants can opt out of a Partner Membership Package. If they opt out, they will still be Certified and can choose to renew at a later date. CultureTalk will notify Consultants of any changes to Partner Membership Packages or the Annual Renewal Fee at least 30 days prior to auto renewals for a new twelve-month term. CultureTalk will provide Consultant

with notice indicating that Consultant's Monthly or Annual Package shall be automatically renewed, as well as any changes to the Packages, no later than thirty (30) days prior to the conclusion of each Renewal Term. Consultant is under no obligation to accept a Renewal Term, and may opt-out of automatic renewals at any time by sending notice to CultureTalk in accordance with Section 12(e) below, or by other method provided by CultureTalk, in its sole discretion. In the event Consultant fails to provide CultureTalk with notice of its intention to opt-out of subsequent Renewal Terms within ten (10) days of the end of the current Term, Consultant shall remain liable to CultureTalk for the full amount of the renewal fee applicable to the upcoming Renewal Term. On the first day of each such Renewal Term, Consultant will pay, and authorizes CultureTalk to charge using Consultant's selected payment method, the Partner Membership Package or Annual Renewal Fee in effect on the first day of each such Renewal Term, without the need for any further authorization from Consultant or notification to Consultant. Current Partner Packages and Annual Renewal Fees [can be found on this page](#). CultureTalk is under no obligation to offer a Partner Membership Package or a Annual Renewal to Consultant and shall provide Consultant with notice of its decision to decline to offer an additional Package or Renewal Term no later than sixty (60) days prior to the conclusion of the current term. This Agreement applies to any Certification Renewal Term.

b. Website Listing. Upon completion of all the certification requirements described in Section 3(a), CultureTalk will list the Consultant on CultureTalk's website as a Certified CultureTalk Consultant for twelve months from the date of completion and during any Certification renewal terms.

c. Streamlined System Access. a. Upon completion of all the certification requirements described in Section 3(a), CultureTalk will provide Consultant with streamlined system access ("Access") to the CultureTalk surveys for customers of Consultant who purchase CultureTalk surveys. Access is granted only for the version of the CultureTalk survey for which the Consultant has been certified pursuant to Section 3(a). CultureTalk reserves the right to update the survey and/or release new versions of the CultureTalk survey. CultureTalk will require additional certification to access any new versions. Certification for new versions will require additional charges. Upon release of a new version of CultureTalk, Access for prior versions will immediately terminate. Access is granted to the Consultant via a secure password. Consultant shall not share the Access password with any other individual and shall report any Access by any individual other than Consultant to CultureTalk immediately. Any failure to report such Access shall be a material breach of this Agreement and CultureTalk may immediately terminate this Agreement. Consultant shall NOT be entitled to any refund of any portion of the Certification Fees or any other fees.

d. Access to Community Message Board. Upon completion of all the certification requirements described in Section 3(a), CultureTalk will provide Consultant with free access to the community message board for twelve months from the date of completion and during any Certification renewal terms.

e. Customization of CultureTalk Reports. Upon completion of all the certification requirements described in Section 3(a), CultureTalk will accept Consultant's logo for inclusion on any of Consultant's CultureTalk reports provided by the Consultant Services for twelve months from the date of completion and during any Certification renewal terms.

f. Advertising of the CultureTalk Certification. a. Upon completion of all the certification requirements described in Section 3(a), CultureTalk will permit Consultant to advertise that they are a Certified CultureTalk Consultant for twelve months from the date of completion and during any Certification renewal terms. CultureTalk provides Consultant a non-exclusive, revocable, non-transferrable license to use the CultureTalk name, logo, and branding only to allow Consultant to advertise that they are a Certified CultureTalk Consultant. Whether Consultant's use of the CultureTalk name, logo, and branding is permitted under this license is determined in CultureTalk's sole discretion.

4. Suspension.

a. Of Accounts by CultureTalk. If a Consultant: (i) violates this Agreement; or (ii) uses the Services in a manner that CultureTalk reasonably believes will cause it liability, then CultureTalk may promptly suspend or terminate all of the items described in paragraphs 3(b) to 3(f) above. Consultant shall not be entitled to any refund of any fees in such event.

b. Security Emergencies. Notwithstanding anything in this Agreement, if there is a Security Emergency then CultureTalk may automatically suspend use of the Consultant Services. CultureTalk will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or terminate the Security Emergency. "Security Emergency" means: (i) use of the Services that do or could disrupt the Services, other Consultants' use of the Services, or the infrastructure used to provide the Services; and (ii) unauthorized third-party access to the Services.

5. Intellectual Property Rights.

a. Reservation of Rights. Except as expressly set forth herein, this Agreement does not grant Consultant any Intellectual Property Rights in the Consultant Services or CultureTalk trademarks and brand features. "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.

b. Limited Permission. Consultant grants CultureTalk only the limited rights that are reasonably necessary for CultureTalk to offer the Services. This permission also extends to trusted third parties CultureTalk works with to offer the Services (e.g., payment provider used to process payment of fees, etc.).

c. Suggestions. CultureTalk may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, license and sublicense, any feedback, comments, or suggestions Consultant sends CultureTalk.

d. Consultant List. CultureTalk may include Consultant's name in a list of CultureTalk Consultants on the CultureTalk website or in promotional materials.

6. Payment.

a. Fees. Consultant will pay, and authorizes CultureTalk to charge using Consultant's selected payment method, for all applicable fees, including Certification renewal fees. Unless and until Consultant sends CultureTalk notice of its decision to opt-out of subsequent Renewal Terms, Consultant authorizes CultureTalk to charge the Certification renewal fee in effect on the first day of each such Renewal Term to Consultant's selected payment method without the need for any further authorization from Consultant or notification to Consultant. Fees are non-refundable except as required by law. Consultant is responsible for providing complete and accurate billing and contact information to CultureTalk. CultureTalk may suspend or terminate the Services if fees are past due.

b. Taxes. Consultant is responsible for collecting and remitting all taxes, including sales tax, VAT tax, and all other taxes that may be applicable to the provision of Services or the Certification fees.

c. Purchase Orders. If Consultant requires the use of a purchase order or purchase order number, Consultant: (i) must provide the purchase order number at the time of purchase; and (ii) agrees that any terms and conditions on a Consultant purchase order will not apply to this Agreement and are null and void.

7. Term & Termination.

a. Term. This Agreement will remain in effect until Consultant's Access to the Services expires or terminates.

b. Termination for Breach. Either CultureTalk or Consultant may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice; or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

c. Effects of Termination. If this Agreement terminates: (i) the rights granted by CultureTalk to Consultant will cease immediately (except as set forth in this section); and (ii) after a commercially reasonable period of time, CultureTalk may delete any Stored Data relating to Consultant's account. The following sections will survive expiration or termination of this Agreement: 1(e) (Third Party Requests), 5 (Intellectual Property Rights), 6 (Payment), 7(c) (Effects of Termination), 8 (Indemnification), 9 (Disclaimers), 10 (Limitation of Liability), 11 (Disputes), and 12 (Miscellaneous).

8. Indemnification.

a. By Consultant. a. Consultant will indemnify, defend, and hold harmless CultureTalk from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of any claim by a third party against CultureTalk and its affiliates regarding: (i) Consultant data; or (ii) Consultant's use of the Services in violation of this Agreement; or (iii) Consultant's negligence or willful misconduct.

b. General. CultureTalk will promptly notify Consultant of any claim and will cooperate with Consultant's defense of that claim. The Consultant will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed; and (ii) CultureTalk may join in the defense with its own counsel at its own expense.

9. Disclaimers.

THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CONSULTANT NOR CULTURETALK AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR BASED ON COURSE OF CONDUCT OR TRADE CUSTOM OR USAGE. CULTURETALK EXPRESSLY DISCLAIMS ALL WARRANTIES.

10. Limitation of Liability.

a. Limitation on Indirect Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR CULTURETALK OR CONSULTANT'S INDEMNIFICATION OBLIGATIONS, NEITHER CONSULTANT NOR CULTURETALK AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR: (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES; OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

b. Limitation on Amount of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, CULTURETALK'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF \$10,000 OR THE AMOUNT PAID BY CONSULTANT TO CULTURETALK HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. SOME COUNTRIES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF DAMAGES OR LIMITATION ON THE DURATION OF IMPLIED WARRANTIES OR CONDITIONS, SO THESE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO SOME CONSULTANTS.

11. Disputes.

a. Informal Resolution. CultureTalk wants to address your concerns without resorting to a formal legal case. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in Section 12(e). If a dispute is not

resolved within thirty (30) days of notice, Consultant or CultureTalk may bring a formal proceeding under Section 11(b).

b. Agreement to Arbitrate. Consultant and CultureTalk agree to resolve any claims relating to this Agreement or the Services through final and binding arbitration under the laws of the United States, State of New York. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. The American Arbitration Association (AAA) will administer the arbitration in the English language under its Commercial Arbitration Rules. The arbitration will be held in Saratoga Springs, New York, or any other location both parties agree to in writing.

c. NO CLASS ACTIONS. Consultant may only resolve disputes with CultureTalk on an individual basis and will not bring a claim in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not allowed.

12. Miscellaneous.

a. Terms Modification. CultureTalk may revise this Agreement from time to time and the most current version will always be posted on the CultureTalk website. If a revision, in CultureTalk's sole discretion, is material, CultureTalk will notify Consultant (by, for example, sending an email to the email address associated with the applicable account). Other revisions may be posted to CultureTalk's terms page, and Consultant is responsible for checking such postings regularly. By continuing to access or use the Consultant Services after revisions become effective, Consultant agrees to be bound by the revised Agreement. If Consultant does not agree to the revised Agreement terms, Consultant may terminate the Consultant Services within 30 days of receiving notice of the change.

b. Entire Agreement. This Agreement constitutes the entire agreement between Consultant and CultureTalk with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, this Agreement will control..

c. Governing Law. The Agreement is governed by the Laws of the United States, State of New York law except for its conflicts of laws principles.

d. Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable and the remaining provisions of the Agreement will remain in full effect.

e. Notice. Notices must be sent via first class, airmail, or overnight courier and are deemed given when received. Notices to Consultant may also be sent to the applicable account email address and are deemed given when sent. Notices to CultureTalk must be sent to:

CultureTalk
P.O. Box 2292
Wilton, New York 12831

f. Waiver. A waiver of any default is not a waiver of any subsequent default.

g. Assignment. Consultant may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of CultureTalk. CultureTalk may not assign this Agreement without providing notice to Consultant, except CultureTalk may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.

h. No Agency. CultureTalk and Consultant are not legal partners or agents, but are independent contractors.

i. Force Majeure. Except for payment obligations, neither CultureTalk nor Consultant will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance).

j. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement or the CultureTalk Certification Program Terms and Conditions.