

## Terms of Use

**These Terms of Use were last updated on 29 September 2019**

### 1. Platform

- 1.1. **Site:** The services provided through the website application located at [www.thecurator.nz](http://www.thecurator.nz) and any associated mobile application (together referred to as the **Platform**) is operated by *Penrith Projects Limited* (**Platform Owner**).
- 1.2. **Agreement to be bound:** These Platform terms of use (**Terms of Use**) and our Privacy Policy apply to all users of our Platform, whether as a member, vendor, or as a visitor.
- 1.3. **If you do not agree:** If you do not agree to be bound by these Terms of Use and the Privacy Policy, then you must stop browsing, accessing or using the Platform.

### 2. Defined Words

- 2.1. In these Terms of Use, the following words have these meanings:

"**Content**" means any software, data, information, picture, photograph, graphics and other materials published or made available on the Platform, including all third party content.

"**Fee**" means the fee charged to a Vendor for listing or promoting its Products.

"**GST**" means goods and services tax as set out in the Goods and Services Tax Act 1985.

"**Intellectual Property Rights**" means any patent, trade mark, service mark, logo, trade name and business name (including rights in goodwill), copyright, moral right, right in a design, right in or to internet domain names, know-how, right in or to confidential information (including trade secrets) and any other intellectual property rights, whether or not registered and any similar rights worldwide.

"**Member**" means a user that has completed our member registration process and created an account to use the services offered on this Platform.

"**Minimum Subscription Term**" means a period of 12 months from the date a Vendor starts using the Platform, unless otherwise agreed between the parties.

"**Platform**" has the meaning given to that term in clause 1.1.

"**Products**" means goods and services relating to weddings being offered by Vendors and promoted through this Platform.

"**Unacceptable**" means anything that is defamatory, harmful, offensive, upsetting, obscene, inappropriate, false, misleading, unsuitable for persons under the age of 18 years, in violation of any law or regulation, or otherwise considered by us as being unacceptable.

"**User**" means any user of the Platform who is not a Member or Vendor.

"**Vendor**" means any user authorised by the Platform Owner to use the services offered on this Platform (including the sale and promotion of that Vendor's Products).

"**We**", "**us**", "**our**" and "**Platform**" are a reference to the Platform Owner.

"**You**" and "**your**" are a reference to you, a User, Vendor or Member.

### 3. Conduct of Users

3.1. **Access and use:** In accessing and using the Platform whether as a User, Vendor or a Member, you acknowledge and agree that you will not do any of the following:

- (a) access or use any of the Platform or its Content for the purposes of competing with us;
- (b) provide us with information that is inaccurate, misleading or false;
- (c) post or transmit any Content that is or is reasonably likely to be Unacceptable;
- (d) abuse, harass, stalk, threaten, breach the confidence of or otherwise violate the rights (such as rights of privacy and publicity) of others;
- (e) post, upload or transmit Content that infringes the Intellectual Property Rights of any person (including posting, uploading or transmitting any Content for which you do not have the owner's consent (e.g. the photographer who took a photograph) to use);
- (f) access an account, without authority, that is not your own or impersonate any other User, Vendor, or Member;
- (g) manipulate, access or otherwise interfere with, without authority, any part of the Platform, or post or transmit any Content that contains any virus, malware, spyware or other destructive component;
- (h) harvest or collect any Content either manually or via an automated software tool;
- (i) download, store or transmit copies of any streamed Content;
- (j) commit or encourage a criminal offence, or post or transmit any Content that is prohibited by or violates any applicable law or regulation;
- (k) transmit any unsolicited advertising, promotional materials or any other forms of solicitation, unless expressly authorised by us; or
- (l) any other conduct that otherwise breaches the Terms of Use.

3.2. **Warranties and acknowledgments:** In relation to any Content you submit to us on the Platform (whether by posting, uploading, transmitting or otherwise) as a User, Vendor or Member, you:

- (a) warrant that you are the owner of the Content or are otherwise authorised or licensed to use it on the Platform or provide it to us;
- (b) warrant that the Content is not Unacceptable;
- (c) grant us a non-exclusive, worldwide, perpetual, royalty-free licence to use and republish your Content in any format, and to exercise all copyright, moral and publicity rights relating to your Content;
- (d) acknowledge that we may edit your Content for brevity, style or clarity; and
- (e) acknowledge that if we use and republish your Content in accordance with clause 3.2(c) we would attribute such Content to you and we would still attribute such Content to you if we make minor edits to your Content.

### 4. Membership specific terms

4.1. **Members and Vendors:** Clauses 4 to 6 (inclusive) apply to your use of the Platform as a Member or Vendor. If you are not a Member or Vendor, then the terms in clauses 4 do not apply to you, but the relevant terms in clauses 5 and 6 will apply to you.

4.2. **Registering:** To become a Member of the Platform, you must complete the applicable online registration form, which will include creating a user login and

password. To become a Vendor of the Platform, you must contact the Platform Owner and the Platform Owner must agree and consent to you becoming a Vendor. By completing the registration process and/or accessing the Platform as a Member or Vendor, you are stating that you are eligible to be a Member or a Vendor and that you agree to be bound by the applicable membership specific terms set out in clauses 4 to 6 (inclusive), in addition to the other terms in these Terms of Use and the Privacy Policy, without qualification. We reserve the right to reject any application to become a Member or a Vendor.

- 4.3. **Details:** You confirm that any information you provide to us relating to you and your Products (if any) through the membership registration process as a Member or Vendor, or subsequent to registration, is current, complete and accurate at the time you provide it, is not misleading or deceptive, or likely to mislead or deceive. If your details or details relating to your Products (if any) change whilst you are a Member or Vendor, you agree to update such information in a timely manner (which, for a Member, can be done by logging onto the Platform, but if you are a Vendor you will need to contact the Platform Owner to advise of any updates).
- 4.4. **User ID and password:** You:
- (a) must ensure that your user ID and password is kept secure and confidential and not revealed to any other person;
  - (b) are entirely responsible for all activities that occur through the use of your user ID and password;
  - (c) must notify us immediately of any unauthorised use of your user ID and password or any other breach of security;
  - (d) will, following any unauthorised use, cease using that password and create a new unrelated password; and
  - (e) indemnify us, our directors, officers and employees against all costs, expenses and damages incurred in connection with any claim arising from any reasonable reliance by us on any use of your password, including us disclosing information relating to your membership.
- 4.5. **Communications:** We will communicate with you by sending you emails to the email address you provide to us at registration. You agree that our communications may include, and you consent to receiving, information about your or another Member's/Vendor's Products, advertising materials, features of the Platform, notices about applicable fees and charges, transactional information, updates, account access, and other information concerning or related to the Platform. We may provide you with an opt-out of receiving certain types of communications by clicking on the relevant unsubscribe link.
- 4.6. **Termination:** You may cancel your membership at any time following the Minimum Subscription Term (if applicable) by giving us at least 30 days' prior written notice. We reserve the right in our sole discretion to terminate your membership at any time if you violate these Terms of Use (including if we deem you to be a competitor accessing or using our Platform or its Content for research or other purposes). If you end your membership, or if it is terminated by us, you must complete any outstanding transactions with other Members and Vendors and pay any Fees (including any applicable Termination Fee) outstanding to us. For the avoidance of doubt and to the maximum extent permitted by law, we will not be required to refund to you any portion of the Fees paid in advance for services that have not yet been provided to you as at the date of termination.

## 5. Transactions between Users, Members and Vendors

- 5.1. **Marketplace:** The Platform provides a directory for Vendors to advertise and promote Products to Users and Members.

5.2. **Transactions with Vendors:** Where a User or Member purchases a Vendor's Product, a contract will be formed between that User or Member and the Vendor directly. We:

- (a) do not act as agent for either party and do not participate in, or endorse any provision of goods or services or any transaction between you and other Members, Vendors or Users; and
- (b) are not involved in any communications, bookings or payment transactions between you and other Members, Vendors or Users.

We simply facilitate identifying Vendors for Members and Users.

5.3. **At your own risk:** Transactions and all other contact between you and other Members, Vendors or Users are conducted entirely at your own risk. You agree that we take no responsibility or liability for any misconduct of any of Members, Vendors or Users including, without limitation, Members, Vendors or Users that have registered under false pretences or who attempt to defraud you. We give no undertakings, representations, or warranties in relation to Content made available and Products listed on the Platform including:

- (a) about ownership of any Content or Product;
- (b) as to the content, safety, description, worthiness, suitability, quality, availability, price or legality of the Content and Products that are listed on the Platform;
- (c) as to the accuracy or truth of listings;
- (d) that any Content or Products will meet your requirements or expectations; or
- (e) about the ability of Members, Vendors and Users to complete a transaction, including credit card transactions.

5.4. **Obligations as a Vendor:** If you make available Content or list Products for sale on the Platform you must:

- (a) only enter listings that are accurate, current, complete, and include all relevant information about the terms of sale, payment terms, delivery methods and who bears the cost of delivery;
- (b) only place listings for Products that exist, are to be sold, and that you are legally entitled to sell;
- (c) only list Products in New Zealand dollars and include GST in the price;
- (d) not list, post, upload or transmit anything that is Unacceptable, illegal, stolen, or unsafe, anything (including Content) which infringes copyright or other Intellectual Property Rights, Products which have been illegally imported or which would require illegal import or export in order to complete the transaction, or any Products of which the sale is prohibited by, or violates any, law;
- (e) ensure you hold the copyright or are otherwise licensed by the copyright owner to use any images or photographs you add to your listings;
- (f) complete the transaction in the manner specified in the listing or as otherwise agreed with the User or Member; and

comply with all of your obligations under the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 (to the extent applicable).

- 5.5. **Obligations as a Member or User:** If you purchase Products via the Platform (whether as a Member or User) you must complete the transaction in the manner specified in the listing or as otherwise agreed with the Vendor including by making full and prompt payment.

## 6. Prices and payment

- 6.1. **Members and Users:** There is no fee for registering as a Member or being a User of the Platform.
- 6.2. **Vendors:** Vendors will be charged a Fee for listing and promoting their Products on our Platform. We have two payment options available to you in relation to payment of the Fee. You can:
- (a) pay the Fee in full on (i) either the date that you start using the Platform (if there is no free trial period) or the date immediately following the expiry of any free trial period agreed between the parties; and (ii) on each anniversary of the relevant date in sub-paragraph (i); or
  - (b) pay by monthly instalments on the 1<sup>st</sup> day of each month of the Minimum Subscription Term.

Our current Fees are available on request from the Platform Owner. We reserve the right to change the Fees at any time. Where it is practicable for us to do so, we will notify registered Vendors of any such changes.

- 6.3. **GST:** Unless otherwise expressly stated, all amounts specified on the Platform are GST inclusive.
- 6.4. **Payment method:** Vendors must pay any applicable Fees with a debit card, credit card or any other payment method that we make available from time to time. In doing so, you acknowledge that:
- (a) additional bank charges may apply to certain transactions; and
  - (b) you are liable for all costs associated with any default in payment of any applicable Fees.
- 6.5. **Payment processing:** Payments for Fees are processed by an independent third party service provider. To allow the processing of payment and in accordance with our Privacy Policy, we provide certain personal information about you to that third party provider. We do not process payments between Members, Users and Vendors.
- 6.6. **Payment information:** We may securely store and use credit card or other payment account information provided by you to make withdrawals from your account in exchange for payment for any Fees.

## 7. Disclaimer, limitation of liability, indemnity and warranties

- 7.1. **Updates:** We reserve the right to update and amend any information on the Platform at any time.
- 7.2. **Exclusion of liability:** To the maximum extent permitted by law, we will not be responsible or liable to you or any other person for any loss or damage:
- (a) in relation to your access and use of the Platform, including if the Platform is unavailable (in whole or part) or performing slowly; or
  - (b) in connection with any errors, omissions or misstatements in any material on the Platform;
  - (c) in relation to any Products that Members or Users have purchased from a

Vendor; or

- (d) resulting from any breach of these Terms of Use by any other Member, Vendor or User.

This exclusion applies regardless of whether our responsibility or liability arises in contract, tort (including negligence), statute or otherwise and for any loss or damage however caused (including direct, indirect, incidental, special or consequential loss or damage).

- 7.3. **Indemnity:** You will take all necessary action to defend and indemnify us and our directors, officers and employees against all loss and damages suffered or incurred in connection with any claim brought by a third party against us arising from a breach by you of these Terms of Use or the Privacy Policy.
- 7.4. **Warranties:** Warranties, conditions or obligations may be implied or imposed by the Consumer Guarantees Act 1993 (**CGA**), which cannot be excluded, restricted or modified. This clause is not intended to limit your rights under the CGA, except where you use the Platform for business purposes, in which case we:
  - (a) to the extent permitted by law, expressly contract out of all provisions of the CGA; and
  - (b) will not be liable to you in any event, whether in contract, tort (including negligence), statute or otherwise and for any loss or damage however caused (including direct, indirect, incidental, special or consequential loss or damage) for any loss of goodwill or loss of profits for an amount in excess of the amount paid by you to us.

## 8. **Linked sites and featured articles**

- 8.1. **Third parties:** The Platform may contain links to other third party websites (**Linked Sites**) or featured articles on Vendors (**Featured Articles**). Linked Sites and Featured Articles are not operated, controlled, or maintained by us and are provided for your convenience only.
- 8.2. **Liability:** You access Linked Sites and Featured Articles at your own risk and to the maximum extent permitted by law we will not be:
  - (a) responsible for the availability, content, security, policies, or practices of any Linked Sites or in connection with any Featured Articles; or
  - (b) liable for any loss or damage (including direct, indirect, incidental, special or consequential loss or damage) suffered by you from accessing, using, relying on or trading with third parties; or
  - (c) responsible or liable for any dealings that you have with the third party.
- 8.3. **No approval:** Any link to a Linked Site or Featured Article does not constitute sponsorship, endorsement, or approval by us of the content, policies, or practices of such Linked Sites or Featured Article.

## 9. **General**

- 9.1. **Intellectual Property Rights:** We or our licensors own all the Intellectual Property Rights in the Platform and Content (excluding any Vendor or third party Content, which belongs to you, your licensors or the relevant third party), including in any modifications or enhancements to the Platform and Content. If you provide Content to us you grant us a non-exclusive, royalty free right to use, copy, modify, and display that Content for the purposes of allowing you to list and promote your Products on this Platform.
- 9.2. **Suspension and termination:** Without prejudice to any other rights and remedies available to us, if we consider that you have breached these Terms of Use, we may

immediately and without written notice to you, suspend or terminate your access to the Platform (or any part of the Platform). On suspension or termination, you must immediately cease using the Platform and must not attempt to gain access to the Platform.

- 9.3. **Amendments:** We reserve the right to change these Terms of Use and the Privacy Policy (**Amendments**) at any time. Any Amendments will be posted on this page on the Platform (and the "last updated" date will be updated). By continuing to access the Platform you agree to be bound by the Amendments. We recommend you regularly review these Terms of Use and the Privacy Policy to see any updates or changes to our Terms of Use.
- 9.4. **Law:** These Terms of Use are governed by and will be construed in accordance with the laws of New Zealand. You submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 9.5. **Contact:** If you have any questions or concerns in relation to the Platform or these Terms of Use, please contact us.