



## Directory Terms and Conditions

These Directory Terms and Conditions apply to use of the Website and the provision of Services by Aletana Esoehen Ajulo (ABN 60 314 429 032) trading as 'Blk Curate Collective' (**Blk Curate Collective**). By purchasing and maintaining a Directory Listing through a Membership with Blk Curate Collective, the Member agrees to be bound by these Directory Terms and Conditions. By using and accessing the Website, the User agrees to be bound by these Directory Terms and Conditions.

### 1. Definitions

- 1.1. In these Directory Terms and Conditions, the following words and expressions have the following meanings:

**ACL** means the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

**Business** means the business operated by the Member and described in their Directory Listing.

**Commonwealth Bank Corporate Overdraft Reference Rate** means the interest rate published by the Commonwealth Bank of Australia from time to time as its standard corporate overdraft reference rate, or, if that rate ceases to be published, a rate reasonably nominated by Blk Curate Collective that is equivalent or closest to the discontinued rate.

**Confidential Information** means all information, in any form, disclosed or made available by a party (the **Disclosing Party**) to the other party (the **Receiving Party**) in connection with these Directory Terms and Conditions and the Services, including commercial, financial, technical, operational, or strategic information, information relating to business, products, services, pricing, Members, suppliers, or personnel, or information clearly marked or identifiable as confidential, but excludes information that is public knowledge, independently developed, or lawfully obtained from a third party.

**Directory** means the online directory operated by Blk Curate Collective where Members may publish Directory Listings and where Users may browse the Directory Listings for goods and services offered by Members.

**Directory Listings** means the profile, entry, or representation of a Member's Business

published on the Directory, which may include the Business name, contact details, description of products or services, images, logos, Intellectual Property and any other content provided by the Member for the purpose of promoting their Business through the Directory.

**Directory Terms and Conditions** means these terms and conditions as amended from time to time.

**Force Majeure Event** has the meaning given to it in clause 9.3.

**GST** has the meaning given to it in the *A New Tax System (Goods and Services tax) Act 1999* (Cth).

**Intellectual Property** means all intellectual property rights of any nature including: (a) copyright, patents, trade marks, database rights, designs, format rights, inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information (whether registered or unregistered); (b) applications and all rights to apply for registration for any of the foregoing; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world in each case for their full term and together with any revivals, renewals or extensions.

**Member** means a natural person, corporation or other legal entity that has purchased or otherwise obtained a Membership from Blk Curate Collective to access and use the Directory and the Services, and who is bound by these Directory Terms and Conditions.

**Membership** means the subscription purchased or otherwise obtained by a Member to access and use the Directory and the Services offered by Blk Curate Collective, subject to these Directory Terms and Conditions.

**Membership Fee** means the fee (if any), as specified in the invoice or on the Website, payable by the Member to Blk Curate Collective in consideration for access to and use of the Directory and Services under a Membership. The Membership Fee may be subject to change from time to time, upon at least 14 days' prior notice to the Member.

**Membership Term** means the period during which the Member is entitled to access and use the Directory and related services, commencing on the date the Member first subscribes to a Membership and continuing for the period specified in the subscription.

**Loss** means all losses, liabilities, damages, costs, expenses, fines, penalties, claims, actions, or demands, including legal costs on a full indemnity basis, whether direct, indirect, or consequential, and whether arising under statute, contract, tort, equity, or otherwise.

**Personal Information** has the meaning given to it in the Privacy Act.

**Privacy Act** means the *Privacy Act 1988* (Cth), as amended or replaced from time to time.

**Services** means the provision of Directory Listings to Members in the Directory.

**User** means any party accessing and/or using the Website.

**Website** means the website located at [www.blkcuratecollective.com](http://www.blkcuratecollective.com) as amended by Blk Curate Collective from time to time that contains the Directory Listings and where the Services are provided.

## **2. Application of these Directory Terms and Conditions**

- 2.1.** These Directory Terms and Conditions apply to all Services provided by Blk Curate Collective to Members and to the use of the Website by Users.
- 2.2.** By subscribing to a Membership, the Member acknowledges and agrees to be bound by these Directory Terms and Conditions.
- 2.3.** By accessing the Website, the User acknowledges and agrees to be bound by these Directory Terms and Conditions.
- 2.4.** For the purposes of the ACL, the Member acknowledges that, to the extent they are a small business or consumer within the meaning of the ACL, they have been given a reasonable opportunity to review these Directory Terms and Conditions before accepting them.

- 2.5.** Any terms proposed by a Member or a User, whether in writing or otherwise, are excluded unless expressly accepted in writing by Blk Curate Collective.

## **3. Commencement and Term**

- 3.1.** These Directory Terms and Conditions commence on the date the Member first subscribes to a Membership for the duration of the Membership Term. In the case of a User, these Directory Terms and Conditions commence and remain in effect for all times at which a User is using the Website.
- 3.2.** These Directory Terms and Conditions continue in full force and effect for the duration of a Membership Term in respect of each Member, unless terminated earlier in accordance with these Directory Terms and Conditions.

## **4. Overview of Services and Website**

- 4.1.** In the case of Members, Blk Curate Collective offers Members the Services in exchange for the Membership Fee for the duration of the Membership Term.
- 4.2.** Blk Curate Collective will provide the Services with due care and skill, and in accordance with all applicable laws and the Privacy Act.
- 4.3.** In the case of Users, Users acknowledge that they are not being provided with the Services, unless they are also a Member.
- 4.4.** Blk Curate Collective may exercise its reasonable discretion as to the format, style and content of the Directory and the Directory Listings.
- 4.5.** Blk Curate Collective shall not be obliged to commence or perform the Services unless and until:
  - 4.5.1.** The full Membership Fee required by Blk Curate Collective (if any) has been received by Blk Curate Collective from the Member; and
  - 4.5.2.** Blk Curate Collective has notified the Member of its acceptance to provide the Member with the Services.
- 4.6.** Until the conditions in clause 4.5 are satisfied, Blk Curate Collective is under no obligation under these Directory Terms and Conditions to perform the Services.
- 4.7.** Where the Member is a corporation, the directors of the Member corporation jointly and severally guarantee to Blk Curate Collective the due and punctual performance of all

obligations and payment of any money owed by the Member corporation to Blk Curate Collective under these Directory Terms and Conditions. If the Member fails to satisfy any obligation or payment of the Membership Fees, each director agrees to be personally liable to Blk Curate Collective to the extent of that failure.

- 4.8.** The Member acknowledges and accepts that Blk Curate Collective may, acting reasonably, in its sole discretion, remove a Member's Business Directory Listing from the Directory:

- 4.8.1.** for non-payment of the Membership Fees;
- 4.8.2.** to ensure compliance with applicable law, including the Privacy Act and the ACL;
- 4.8.3.** for any breaches of these Directory Terms and Conditions; or
- 4.8.4.** if the Member's Business, if it is a corporation, ceases to be duly incorporated, or is otherwise subject to an insolvency event (however described) in accordance with applicable law.

## **5. Member Warranties and Indemnities**

- 5.1.** The Member warrants to Blk Curate Collective that:

- 5.1.1.** they are authorised by the Business to instruct Blk Curate Collective to create a Directory Listing in the Directory for the Business;
- 5.1.2.** all information in their Directory Listing, including the Business name, contact details, description of products or services, pricing, images, and other content, is true, accurate, not misleading or deceptive and in compliance with the ACL;
- 5.1.3.** their Directory Listing shall not contain any illegal, obscene, defamatory, offensive, or otherwise harmful content, including viruses, malware, or anything that could harm Blk Curate Collective's Website, systems and/or business operations;
- 5.1.4.** they are the owner or authorised user of all Intellectual Property used in their Directory Listing;
- 5.1.5.** they will comply with the ACL; and
- 5.1.6.** they will not use the Directory or their Directory Listing to promote, conduct, or enable illegal or unethical business activities.

- 5.2.** The Member indemnifies and holds Blk Curate Collective harmless from any Loss Blk Curate Collective suffers or incurs, whether under statute, contract, tort, equity, legal theory or otherwise, arising from or in connection with:

- 5.2.1.** a breach of any warranty in clause 5.1;
- 5.2.2.** any breach of the ACL, the Privacy Act and/or other applicable laws; or
- 5.2.3.** any Loss suffered or borne by Blk Curate Collective as a result of the Member's actions or omissions, to the fullest extent permissible by law.

## **6. Member Obligations**

- 6.1.** In addition to its obligations under clause 5, the Member shall:

- 6.1.1.** provide accurate and complete information to Blk Curate Collective to enable Blk Curate Collective to perform the Services lawfully and in accordance with these Directory Terms and Conditions;
- 6.1.2.** ensure their Directory Listings comply with the ACL, Privacy Act and other applicable laws; and
- 6.1.3.** comply with all reasonable instructions or directions issued by Blk Curate Collective in connection with the Services.

- 6.2.** The Member acknowledges and accepts that Blk Curate Collective has no obligation to verify or review content submitted by the Member and the Member is responsible for their own compliance with applicable laws in relation to their Directory Listing(s).

## **7. User Acknowledgements**

- 7.1.** The User acknowledges and accepts that:

- 7.1.1.** Blk Curate Collective does not endorse, guarantee, or warrant any goods or services offered by Members and their Business, and, to the fullest extent permissible by law, including the ACL, shall not be liable for any loss, damages or harm arising from a Member's Business' goods, services, or conduct; and
- 7.1.2.** they interact with a Member's Business at their own risk and that before engaging a Member and/or their Business to provide goods and/or services to the User, they have made reasonable enquiries as to the quality, merchantability and suitability of such goods and/or services.

## 8. Membership Fees

- 8.1. Blk Curate Collective will invoice the Member for the Membership Fees and the Member must pay the Membership Fees in accordance with the payment terms set out in such invoice(s), or as otherwise notified by Blk Curate Collective to the Member from time to time.
- 8.2. If the Member fails to pay any Membership Fees to Blk Curate Collective by the due date:
  - 8.2.1. the Member must pay interest on the overdue amount at a rate of 4% per annum above the Commonwealth Bank Corporate Overdraft Reference Rate from time to time. Interest accrues daily from the due date until the amount is paid in full, whether before or after judgment, and is payable together with the overdue amount;
  - 8.2.2. Blk Curate Collective may suspend performance of its obligations under these Directory Terms and Conditions, including any future engagements of Blk Curate Collective by the Member, until the overdue amount is paid, without incurring any liability; and
  - 8.2.3. the Member must pay any and all reasonable costs and expenses (including legal costs on a full indemnity basis) incurred by Blk Curate Collective in recovering overdue amounts, in addition to the overdue amount and interest.
- 8.3. Payment of the Membership Fees must be made in full without deduction, set-off or withholding unless required by law. If any deduction, set-off or withholding is required by law, the Member must pay an additional amount such that the net amount received and retained by Blk Curate Collective equals the amount that would have been received had no deduction, set-off or withholding been required.
- 8.4. Payments must be made by electronic funds transfer to the bank account nominated by Blk Curate Collective and notified to the Member from time to time.

## 9. Liability

- 9.1. Nothing in these Directory Terms and Conditions excludes or limits any party's liability for:

- 9.1.1. death or personal injury caused by the negligence of that party;
  - 9.1.2. any liability which cannot lawfully be excluded or limited, including any rights and remedies under the ACL; or
  - 9.1.3. fraud (including fraudulent misrepresentation).
- 9.2. Subject to clause 9.1, and except as expressly set out in these Directory Terms and Conditions, neither party will be liable to the other party (whether in contract, tort, statute, equity, or otherwise) in connection with these Directory Terms and Conditions for any Loss related to: (a) special, incidental, punitive, consequential or indirect loss, damage, cost or expense; or (b) lost profits, lost goodwill, loss of revenue, loss of business, loss of contracts, loss of goods, business interruption, loss of economic opportunity or loss of bargain, in each case, even if a party is aware of the possibility that such losses might be incurred.
  - 9.3. To the fullest extent permitted by law, Blk Curate Collective will not be liable for any Loss arising from delay or failure to perform the Services, to the extent that such event results from circumstances beyond Blk Curate Collective's reasonable control (a **Force Majeure Event**). If Blk Curate Collective's performance of the Services is affected by a Force Majeure Event, it must notify the Member as soon as reasonably practicable after becoming aware of the Force Majeure Event.
  - 9.4. Subject to clause 9.1, Blk Curate Collective's aggregate liability in contract, tort (including negligence, breach of statutory duty, or liability under indemnities), or otherwise, in connection with any and all claims arising out of or relating to these Directory Terms and Conditions, whether arising from a single event or a series of related events, is limited to the lesser of:
    - 9.4.1. an amount equal to the Membership Fees (excluding GST and any third-party charges) paid by the Member to Blk Curate Collective in the twelve (12) months immediately preceding the date of the first claim; or
    - 9.4.2. the cost of resupplying the Services, at the election of Blk Curate Collective.

## 10. Termination

- 10.1. Either party may terminate these Directory Terms and Conditions in respect of future

Services by giving seven (7) business days written notice to the other party. Termination does not affect any rights or obligations accrued prior to termination.

**10.2.** Blk Curate Collective may immediately suspend or terminate provision of any Services, in whole or in part, and terminate these Directory Terms and Conditions, by written notice to the Member/User if:

**10.2.1.** the Member fails to pay any Membership Fees or other amounts when due;

**10.2.2.** the Member or the User breaches any material provision of these Directory Terms and Conditions (including, for the avoidance of doubt, any breach of clause 5.1), and where the breach is capable of remedy, fails to remedy the breach within seven (7) business days of receiving notice from Blk Curate Collective; or

**10.2.3.** any event occurs that, in the reasonable opinion of Blk Curate Collective, affects the Member's or the User's ability to perform its obligations under these Directory Terms and Conditions.

**10.3.** Termination of one engagement under these Directory Terms and Conditions does not terminate these Directory Terms and Conditions in respect of other engagements unless expressly stated in writing.

**10.4.** To the extent permitted by applicable law and the ACL, if a Member terminates a Membership prior to the expiry of the Membership Term, the Membership Fee paid is non-refundable unless otherwise agreed in writing by Blk Curate Collective.

**10.5.** Blk Curate Collective may, at its sole discretion, offer a pro-rata refund or credit where a Membership is terminated early due to a Force Majeure Event. Any such refund or credit will be calculated based on the unexpired portion of the Membership Term, less any Membership Fees owed to Blk Curate Collective.

**10.6.** Termination of a Membership does not release the Member from any outstanding obligations, including payment of Membership Fees or warranties and/or indemnities arising under these Directory Terms and Conditions.

## **11. Privacy**

**11.1.** Blk Curate Collective may collect, use, hold and disclose Personal Information in connection with its performance of the

Services to Members as well as Users in relation to their use of the Website.

**11.2.** The Member and the User consents to Blk Curate Collective collecting, using and disclosing Personal Information for the purposes of performing the Services and complying with applicable laws, including the Privacy Act.

**11.3.** Blk Curate Collective will take all reasonable steps to protect Personal Information from unauthorised access, use, disclosure, or loss, in accordance with the Privacy Act.

**11.4.** The Member warrants that it has obtained all necessary consents, and made all disclosures required by law, in respect of any Personal Information it provides to Blk Curate Collective.

## **12. Intellectual Property Ownership**

**12.1.** Unless agreed otherwise in writing, Members retain ownership of all Intellectual Property contained in their Directory Listings.

**12.2.** By submitting content to the Directory, Members grant Blk Curate Collective a non-exclusive, worldwide, royalty-free, transferable, sublicensable licence to use, reproduce, adapt, publish, and display that content solely for the purposes of providing the Services.

**12.3.** The licence in clause 12.2 continues for the duration of the Member's Directory Listing and ceases upon removal or deletion of the content from the Directory, except where required to comply with applicable laws.

## **13. Confidential Information**

**13.1.** Each party must keep all Confidential Information confidential and may only disclose it:

**13.1.1.** with the prior written consent of the other party;

**13.1.2.** as required by law, a court of competent jurisdiction, or a regulator; and

**13.1.3.** to its advisers, employees, or contractors who are bound by confidentiality obligations no less stringent than those in these Directory Terms and Conditions.

## **14. General**

**14.1.** Each party represents, warrants and undertakes to the other that it has full capacity and authority to enter into and to perform its obligations under these Directory Terms and Conditions.



- 14.2.** These Directory Terms and Conditions will not be deemed to constitute a partnership or joint venture or contract of employment between the parties.
- 14.3.** These Directory Terms and Conditions (and any non-contractual obligations relating to it) will be governed by and construed in accordance with the laws of Victoria, Australia and the courts of Victoria, Australia will have exclusive jurisdiction regarding any disputes arising from or in connection with these Directory Terms and Conditions. The Member and the User waive any objection to any proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.
- 14.4.** The Member and the User may not assign or transfer their rights or obligations under these Directory Terms and Conditions without Blk Curate Collective's prior written consent. Blk Curate Collective may assign its rights or subcontract performance of the Services without the Member's or the User's prior consent.
- 14.5.** Clauses that by their nature survive termination include, but are not limited to clause 5, clause 8, clause 9, clause 10, clause 11, clause 12, clause 13, clause 14 and clause 15.
- 14.6.** If any provision of these Directory Terms and Conditions is held to be illegal, invalid, or unenforceable, that provision will be severed, and the remainder of these Directory Terms and Conditions will continue in full force and effect. Where possible, the affected provision will be replaced with a lawful and enforceable provision that closest achieves the original legal, economic, or commercial intent of the severed provision.
- 14.7.** Notices must be in writing and delivered by hand, email, or pre-paid post to the addresses specified by the parties, or as otherwise notified in writing. A notice is taken to be received:
- 14.7.1.** if delivered by hand, on delivery;
  - 14.7.2.** if sent by pre-paid post, three (3) business days after posting; and
  - 14.7.3.** if sent by email, at the time of transmission, unless the sender receives a delivery failure notice.
- 14.8.** These Directory Terms and Conditions constitute the entire agreement between the parties in relation to the Services.

## **15. User Liability and Use of Directory**

- 15.1.** Users must use the Website and the Directory in accordance with all applicable laws and these Directory Terms and Conditions.
- 15.2.** Users must not, and must not attempt to:
- 15.2.1.** interfere with or disrupt the Website or Services;
  - 15.2.2.** upload or transmit viruses, malware, or harmful code;
  - 15.2.3.** copy, scrape, extract, or use any data, content, Personal Information or information from the Directory for commercial purposes without the prior written consent of Blk Curate Collective;
  - 15.2.4.** engage in any conduct that Blk Curate Collective reasonably considers fraudulent or harmful.
- 15.3.** Users are responsible for all activity conducted through their access to the Website, and Blk Curate Collective may suspend or restrict access to Users who breach this clause, without liability at any time.

