

Avaana Pty Ltd

Terms of Use and Booking Conditions

Effective: May 2017

INTRODUCTION

Welcome to www.avaana.com.au, an online marketplace connecting health, fitness, wellbeing, spa, beauty and other practitioners and businesses with Australians through an interactive online platform. The Platform is owned and operated by Avaana Pty Ltd ACN 610 520 600 (defined as **Avaana, we, our and us**).

These Terms of Use and Booking Conditions (**Terms**) apply to all users of the Platform (defined as **Users or you**) who view, have access to, and use the Platform. These Terms also apply to the Booking of Provider Services available for sale through the Platform.

Please read the Terms carefully.

By accessing, browsing or otherwise using any part of the Platform you acknowledge that you have read and understood and agree to be bound by these Terms and consent to Avaana collecting, using and disclosing your personal information in accordance with these Terms. If you do not agree with any part of these Terms, you must not use the Platform.

1. Eligibility

- 1.1 If you are using the Platform on behalf of an entity, organisation, or company, you represent and warrant that you have the authority to bind such entity, organisation, or company to these Terms and you agree to be bound by these Terms on behalf of such entity or organisation.
- 1.2 By registering for, or otherwise using, the Platform, you represent that:
 - (a) you have not been previously suspended or removed from the Platform by Avaana;
 - (b) if you are under the age of 18 or the age of majority in your jurisdiction, you further represent that you are using the Platform under the supervision of a parent, legal guardian, or other responsible adult; and
 - (c) you have the legal capacity, power and authority to agree to be bound by these Terms and perform the obligations contained in these Terms.
- 1.3 This Platform is provided for Users in Australia only. Whilst access may be possible from outside Australia, the Platform is not intended for such use and such users access the Platform at their own risk.

2. Accounts

- 2.1 To become a registered User on the Platform, with your permission, Avaana will use the information located on your public Facebook profile to create an Account including, your name and e-mail address. Alternatively, you can become a registered User on the Platform by providing your e-mail address, nominating a password and providing any other details

required by the Platform in connection with the creation of an Account.

- 2.2 You are responsible for the safety and security of your password and log in details. To help protect against unauthorised access to your account you are advised to store your username(s) and password(s) safely and securely.
- 2.3 You agree that the information you provide to Avaana, whether on registration or at any other time, will be true, accurate, current, and complete.
- 2.4 By using the Platform, you agree that, in addition to exercising common sense:
 - (a) you will not create more than one Account for yourself;
 - (b) you will not create another Account if we have already disabled your Account, unless you have our written permission to do so;
 - (c) you will not share your password;
 - (d) you will not log in or attempt to access the Platform through unauthorised third-party applications or clients; and
 - (e) any information you provide in connection with your Account must describe you, an individual person.

3. Connecting Users with Providers

- 3.1 The Platform connects Users with health, fitness and wellbeing Providers through the Platform, in particular, through the Marketplace Service.
- 3.2 All Provider Services available for Booking on the Platform are performed by and are the sole responsibility of the Providers. Avaana takes and concludes Bookings as the agent of each Provider but does not actually provide any Provider Services. Avaana is not responsible or liable to you for the actual Provider Services that are booked through the Platform (including those Provider Services which have been partially or fully paid for using a Promo Code).
- 3.3 If you make a Booking, in addition to the existing contract between you and Avaana in accordance with these Terms, a contract is formed between you and the relevant Provider in respect of the provision of the Provider Services which you book through the Platform (the **Provider Contract**). That Provider Contract is also subject to these Terms and may include additional terms which will be set out on the Provider's Provider Page.

4. Bookings through the Platform

- 4.1 There are two types of Bookings you can make through the Platform:
 - (a) Appointments, where you book a specific appointment time and date at which to receive the relevant Provider Service; and
 - (b) Vouchers, where you book a Provider Service with a specific Provider and at a specific price but where, at the time of making the Booking, you do not book a time and/or date for receiving that Provider Service.

- 4.2 The Booking process (including, the Checkout) allows you to check and amend any errors before submitting your Booking to Avaana. Please take the time to read and check your Booking before finally submitting your Booking.
- 4.3 It is your (or the person receiving the Provider Services') sole responsibility to communicate in advance any medical or health-related conditions and/or special needs to the Provider that might affect or be affected by any Provider Services (for example without limitation, allergy information and health issues). There is a specific designated section on the Checkout pursuant to which to provide this information and if there is any such additional information you wish to disclose, you may email it to hello@avaana.com.au and we will email it to the Provider. Subject to clause 20.1, if you (or the relevant recipient of the Provider Services) fail to disclose any such information to the applicable Provider, neither Avaana nor the relevant Provider shall be liable to you (or the recipient of the Provider Services) for any injury, loss or damages resulting from the Provider Services that could reasonably have been avoided if you (or the recipient of the Provider Services) had disclosed that information prior to receiving the Provider Services.

5. Making Appointments

- 5.1 If you wish to reschedule or cancel an Appointment, all rescheduling and cancellation enquiries must be made by email to hello@avaana.com.au. To assist Avaana, please forward your Appointment confirmation email with at least 3 suitable alternative 4 hour periods of time, to assist us to reschedule your Appointment with the Provider. Do not contact the relevant Provider directly in relation to rescheduling or cancellation enquiries.
- 5.2 Provided your Appointment is not due to take place within the next 24, 48 or 72 hours from the time of your rescheduling or cancellation enquiry under clause 5.1 (the applicable timeframe being as determined by the Provider and notified to you at Checkout (**Cancellation Period**)), we will endeavour to procure that the Provider offers you a suitable alternative Appointment time and/or date. Please note that our ability to accommodate your request will be subject to the Provider's availability during the time you wish to reschedule.
- 5.3 If we are unable to offer you a suitable alternative Appointment time and/or date, you may cancel your Appointment and in this regard, we will offer you a Promo Code equal to the value your Appointment, which must be redeemed on the Platform within 12 months of your Appointment.
- 5.4 If the Appointment is due to take place within the relevant Cancellation Period, you will not be entitled to any such Promo Code.
- 5.5 Our Providers are legally required to ensure that their time and date availability to accept Appointments is kept up to date at all times, so that you are able to view the Provider's accurate time and date availability at the time of making an Appointment. From time to time, Providers may fail to keep their availability up to date and as a result, may not be able to honour an Appointment (for example, if they are double booked at the time of your Appointment). If this occurs, Avaana apologises and we will contact you to reschedule the Appointment as soon as practicable after we are notified by the Provider that they are unable to honour the Appointment. If we are unable to offer you a suitable alternative appointment time and/or date, you may cancel your Appointment and we will provide you with your choice of a Promo Code of the value of the Appointment (or refund) in respect of that Appointment.

- 5.6 While we take the obligations of our Providers under clause 5.5 very seriously, except to the extent of our obligations under clause 5.5 in respect of attempting to reschedule an Appointment and providing with your choice of a Promo Code (or refund) in respect of that cancelled Appointment, we are not responsible to you for the failure of a Provider to comply with its obligations to ensure that their time and date availability to accept Appointments is kept up to date at all times.
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6. Buying Vouchers

- 6.1 When you buy a Voucher for a particular Provider Service:
- (a) if the relevant Provider Services the subject of the Voucher is a multiple appointment or multiple session pack, you will need to contact the relevant Provider yourself in order to organise the time/date of each of the appointments or sessions the subject of the Voucher;
 - (b) if the relevant Provider Services the subject of the Voucher is a group class or group session (or a pack of group classes or group sessions), you will need to visit the Provider's website or contact the relevant Provider yourself in order to find out when the class or session times are being held; or
 - (c) if the relevant Providers Services the subject of the Voucher is a product or goods, the Provider will use its best endeavours to deliver the products or goods to you as soon as reasonably practicable after the date of your Booking.
- 6.2 The expiry date of a Voucher will be 12 months from the date of the Booking. If you are unclear as to the expiry date of your Voucher, please contact us at hello@avaana.com.au.
- 6.3 Any appointment, session or class the subject of a Voucher is unable to be cancelled or rescheduled, except with the consent of the Provider.
- 6.4 A Voucher can only be redeemed with the relevant Provider identified in the Voucher.
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7. Using Promo Codes

- 7.1 Promo Codes are issued by Avaana. You may only redeem a Promo Code against the purchase price of Bookings made through the Marketplace Service. This means that we will reduce the purchase price payable for a Booking by the value of your Promo Code. If the purchase price of the Booking is less than the Promo Code, the remaining balance of the Promo Code will automatically expire.
- 7.2 You cannot use a Promo Code to pay for Provider Services at a Provider's own venue or on their own website.
- 7.3 A Promo Code is only valid until its expiry date. Its expiry date will be printed on the accompanying advertisement or email. You are responsible for keeping your Promo Code safe and we do not accept liability for Promo Codes that are lost, stolen, damaged or used without authority.

8. Payments for Provider Services

- 8.1 Prices and any applicable delivery and/or processing charges will be as quoted on the Platform, but may be subject to change by Avaana or Providers at any time (in which case the Platform will be updated accordingly, but changes will not affect Bookings which you have already made).
- 8.2 Unless it is available and you have opted to Pay by Cash (see clause 8.5), payment for all Provider Services must be made at the time of Booking in Australian dollars by credit or debit card. Any currency conversion costs or other charges incurred by you in making a payment will be borne by you in addition to the price due to Avaana.
- 8.3 We use a third party payment service provider to process payments for Bookings. Accordingly, Avaana cannot guarantee continuous, uninterrupted or secure access to the payment facility available on Checkout, nor can we guarantee that the facility is virus or error free. Similarly, because there are many factors beyond our control (such as delays in the banking system or in card networks), we cannot predict or guarantee the amount of time needed to complete the processing of your payment for a Booking.
- 8.4 If you pay for Provider Services through the Platform, Avaana will collect the payment in its capacity as the commercial agent of the relevant Provider. Once Avaana has successfully received your payment for the Provider Services, this will discharge your debt to the Provider on whose behalf Avaana has collected the payment.
- 8.5 In respect of some Providers and some Provider Services, there may be an option for you to make an Appointment which permits you to Pay By Cash directly to the Provider at the time of the Appointment, rather than making payment through the Platform. Please note that when you elect to Pay by Cash when making a Booking, you are still entering into a binding legal contract (the Provider Contract), in respect of the Booking and you must pay the Provider in full when you (or the recipient of the Provider Services) attends the Appointment. If you fail to show up to an Appointment that you have not paid for, you will still be liable to the Provider for the full amount due under the Provider Contract, unless cancelled in accordance with these Terms and the relevant Provider Contract.
- 8.6 Please note that Promo Codes cannot be redeemed when using the Pay by Cash option.

9. Complaints

- 9.1 We care about your experience and want to ensure we maintain the highest standards possible and so if you would like to make a complaint about Avaana or one of our Providers or their Provider Services, please email us at hello@avaana.com.au and we'll do our best to help.
- 9.2 Following receipt of a complaint which relates to a Provider, we will contact the Provider to try and resolve the issue on your behalf. If we are unable to resolve the issue following contact with the Provider, if we consider it to be fair in all the circumstances, we may at our sole discretion elect to give you a Promo Code in connection with the dispute (to be redeemed on the Platform in order to reduce the purchase price of any future Booking of Provider Services through the Platform).
- 9.3 Further or alternatively, if you are unhappy with the Provider Services received from a

Provider pursuant to a Booking, you can also:

- (a) speak to the Provider yourself to try and resolve the issue; and/or
- (b) leave an honest review on the Platform to reflect your experience.

- 9.4 While Avaana takes all complaints about our Providers very seriously and will always do what we can to help to resolve them, we are not responsible to you for the Provider Services which the Providers provide and are under no obligation to provide you with a refund or Promo Code in the event you are dissatisfied with Provider Services which you have received from our Providers.

10. User Rights in respect of the Platform

- 10.1 Your only remedy with respect to any dissatisfaction with:

- (a) the products and/or services offered on the Platform;
- (b) these Terms;
- (c) any policy or practice of Avaana in operating the Platform; or
- (d) any content or information transmitted through the Platform,

is to terminate these Terms and your Account. You may terminate these Terms at any time by deleting your Account by contacting hello@avaana.com.au and discontinuing use of any and all parts of the Platform.

11. Termination

- 11.1 Avaana may, in its absolute discretion, suspend or terminate your access to all or part of the Platform, including if we reasonably consider that you are in breach of any provision of these Terms, and without the need to provide reasons.
- 11.2 You acknowledge that any suspension or termination of your access to the Platform may be carried out without prior notice, and you agree that Avaana will not be liable to you or any third party for any such suspension or termination.
- 11.3 Avaana may in its absolute discretion refuse to publish, or may remove, any User Content without giving any reason.

12. Lawful use of the Platform

- 12.1 You must use the Platform for lawful purposes only and ensure that your access to, or use of, the Platform is not illegal or prohibited by law. It is your responsibility to obtain legal, financial, accounting and other professional advice in relation to compliance with all Applicable Laws in using the Platform. You agree at all times to deal with any information or material provided by us or accessed through the Platform in a manner which complies with all Applicable Laws.
- 12.2 You are permitted to download content specifically designed to be downloaded from the Platform for personal use only, subject to the maintenance of the integrity of any copyright,

trademark or other proprietary notices or material. You may not sell, redistribute or use the content of the Platform for any commercial purpose. We do not permit any copy, modification, alteration, distribution, sale, broadcast or transmission of any downloaded material.

12.3 You agree to not:

- (a) attempt to gain unauthorised access to any part of the Platform;
- (b) interfere with or disrupt (or attempt to interfere or disrupt) any servers or networks connected to the Platform or the integrity or performance of the Platform;
- (c) disable any protection software associated with the Platform;
- (d) send or store any Harmful Code when using the Platform;
- (e) use any data mining, robots or similar data gathering or extraction methods on the Platform;
- (f) reverse engineer or decompile any parts of the Platform;
- (g) frame or link to any Avaana content or information available on the Platform, without our prior written consent;
- (h) misuse any content that appears on the Platform, in any way;
- (i) use any feature of the Platform in a manner that we reasonably determine is inappropriate or not intended; or
- (j) assign your rights or obligations under these Terms.

12.4 You must not submit information to us on, from or through the Platform that:

- (a) may disclose a person's confidential information;
- (b) may contravene your privacy obligations or any other person's privacy obligations;
- (c) is illegal or may constitute or encourage any contravention of any Applicable Laws by any person; or
- (d) is otherwise, in our view, inappropriate.

12.5 We provide links on the Platform to other third party Platforms which are subject to their own terms and conditions of use and privacy policies and over which Avaana has no control. Use of the links provided is entirely at your own risk and discretion. We do not endorse any information on those linked sites or any associated organisation, product or services.

13. Intellectual Property

13.1 All copyright in the materials found on the Platform (including text, graphics, logos, icons, sound recordings and software) is owned by us or by third parties.

13.2 Material procured from a third party may be the subject of copyright owned by that third party. Except as expressly authorised, and subject to the conditions prescribed under, the *Copyright*

Act 1968 (Cth) or except as expressly permitted by these Terms or the relevant copyright owner or licensor, you may not, in any form or by any means:

- (a) copy, adapt, reproduce, store, distribute, print, display, perform, publish, communicate to the public, make available to public or create derivative works of the whole or any part of the materials the subject of copyright; or
- (b) commercialise the whole or any part of the materials the subject of copyright, without our express written permission or, in the case of third party material, from the owner of the copyright in that material.

13.3 Trademarks used on the Platform are our trademarks (registered or unregistered) or trademarks of third parties. If you use any trademarks owned by us, in reference to us or the Platform, you must include a statement attributing that trademark to us. You must not use any of our trademarks or trademarks of third parties featured on the Platform:

- (a) in, or as the whole or part of, your own trademarks;
- (b) in connection with any business, products or services which are not ours;
- (c) in a manner which may be confusing, misleading or deceptive to any person; or
- (d) in a manner that disparages us, the third party owners of the trademarks or the Platform.

13.4 By posting User Content to any area of the Platform, you represent and warrant that:

- (a) your posting does not violate any other entity's Intellectual Property rights; and
- (b) you have the right to validly and irrevocably grant a license to Avaana as set out in clause 13.2.

13.5 Avaana reserves the right, in its absolute discretion, to take actions to limit access to the Platform and/or terminate the account of a User who infringes any Intellectual Property Rights of others.

14. Mobile Services

14.1 If you use the Platform through a mobile device, you agree that information about your use of the Platform through your mobile device and carrier may be communicated to us, including your mobile carrier, and your mobile number.

14.2 Use of the Platform through a mobile device may cause data to be displayed on and transmitted to your mobile device. You acknowledge you are responsible for all charges and necessary permissions related to accessing the Platform through Your mobile access provider.

15. Information and Content

15.1 Except for information that is Personal Information, all User Content stored on the Platform is owned by the User, and not Avaana. You are solely responsible for all User Content that you

upload on the Platform or transmit to Providers and other Users.

- 15.2 You acknowledge that the relevant Provider owns copyright in any Provider Content available to you through the Platform.
- 15.3 You acknowledge and agree that upon uploading any User Content on the Platform, you hereby unconditionally and irrevocably grant (or represent and warrant that the owner of such rights has expressly unconditionally and irrevocably granted) to us, a worldwide, royalty-free, perpetual and non-exclusive licence to use, reproduce, copy, adapt, store, distribute, print, display, perform, broadcast, publish, communicate to the public, make available to the public or create derivative works of such User Content anywhere, for any purpose and in any form, without any compensation to you. Avaana will discontinue this licensed use within a commercially reasonable period after such User Content is removed from the Platform.
- 15.4 Avaana is only providing a platform for Providers and Users to communicate and does not represent or warrant that the information on the Platform is current, fit for the purpose for which the content is downloaded and does not infringe upon the rights of others. You are responsible for your use of any information or materials obtained from the Platform. You should make your own enquiries to check if the information on the Platform is accurate, complete and suitable for your intended use.
- 15.5 Avaana is not involved in the actual transaction between Providers and Users including the Provider Contract. As a result, Avaana is not responsible for:
- (a) the quality, safety, length or legality of any Provider Service;
 - (b) Provider Content and User Content (or the truth or accuracy of Provider Content or User Content); or
 - (c) the ability of Providers to properly service the needs and requirements of Users.
- 15.6 Avaana makes no representations in relation to any User Content, Provider Content or information available on or otherwise provided to you through the Platform.
- 15.7 Avaana encourages you to keep a back-up copy of any of your User Content. In no event will Avaana be liable for the deletion, loss, or unauthorised modification of any User Content.
- 15.8 While Avaana reserves the right in its absolute discretion to remove User Content, Provider Content or other material from the Platform from time to time, Avaana does not assume any obligation to do so and to the extent permitted by law, disclaims any liability for failing to take any such action.

16. Privacy

- 16.1 If you provide any information about yourself to Avaana, whether through the Platform or directly to Avaana (including via telephone or email) for the purposes of a Booking, you agree that Avaana may provide this information (other than credit card or debit card information) to the Provider for the purposes of the Provider complying with its obligations in respect of a Booking and the performance of Provider Services.
- 16.2 Avaana will take all reasonable security precautions to ensure that all information gathered

through use of the Platform or otherwise is kept secure from all unauthorised use.

- 16.3 The Platform may use "Cookies" or other forms of electronic information gathering to provide Avaana with information about the use of the Platform.

17. Indemnity

- 17.1 You agree to indemnify and keep indemnified, us, our officers, employees and agents (those indemnified) against all losses, damages, liabilities (including legal fees) and expenses arising out of:
- (a) your access to, or use of, the Platform, information you submit to us or any linked website or system (including the payment facility available on Checkout);
 - (b) any decision or action taken by you in reliance on any information or materials on the Platform and any linked website;
 - (c) any breach of these Terms by you;
 - (d) any wilful misconduct by you;
 - (e) any or other negligent act or omission by you; or
 - (f) action brought by any governmental, state, or local agencies or arising from any failure by you to comply with all Applicable Laws in relation to your use of the Platform.
- 17.2 The User acknowledges that Avaana enters into these Terms for its own benefit but also as an agent for the benefit and on behalf of each of its officers, directors and employees (each an **Indemnified Third Party** and, collectively, the **Indemnified Third Parties**) and that the rights in respect of indemnification set out in clause 17.1 shall be rights and benefits of each such Indemnified Third Party (as if, in each case, a party to these Terms in its own right). Such rights shall be enforceable under these Terms by Avaana as agent for each such Indemnified Third Party. Notwithstanding the foregoing, the User and Avaana may agree in writing to amend this any provision of these Terms without the consent of any of the Indemnified Third Parties, even if that amendment affects or will affect the rights conferred on any Indemnified Third Party hereunder.

18. Disclaimer

- 18.1 We reserve the right to amend these Terms at any time. Any amendments will be effective immediately upon notification on the Platform. Your continued use of the Platform following such notification will represent an agreement by you to be bound by these Terms as amended.
- 18.2 We reserve the right to make any changes to the Platform as considered by us necessary or desirable, at any time, without notice.
- 18.3 We reserve the right, at any time, to disable, close or render inaccessible the Platform for so long as we desire for any reason whatsoever, and without the need to provide any reasons. To the maximum extent permitted by law, we do not accept liability for any Loss which you

may suffer or incur as a result of such actions.

- 18.4 Avaana gives no guarantee to you of the continued availability of any particular Provider Service advertised on the Platform and will not be liable to you should a Provider have filled the vacancy at any time prior to removal of the Appointment from the Platform.
- 18.5 Avaana gives no guarantee to you that the Platform accurately represents the actual time and date/availability for any Provider in respect of their availability to accept Appointments.
- 18.6 There are risks in dealing with strangers. You assume all risks associated with dealing with persons with whom you come in contact through the Avaana.
- 18.7 Avaana is only providing a platform for Providers and Users to communicate and makes no representations about any content made available on or otherwise provided to you through the Platform. You acknowledge and agree that Avaana is not liable for the truth or accuracy of the information provided in any content provided to you.
- 18.8 Other people's information posted on the Platform may be offensive, harmful or inaccurate, and in some cases will be mislabelled or deceptively labelled. We expect that you will use caution and common sense when using the Avaana.
- 18.9 By accessing and using the Platform, you assume all risks associated with such access and use. The Platform is provided to you on an "as is," "as available" and "with all faults" basis and without warranties or representations of any kind either express or implied.
- 18.10 To the fullest extent permitted by law, we do not represent or warrant that the Platform or the products and/or services generally available through the Platform will be uninterrupted or error-free or defect-free or that errors or defects in the Platform will be corrected. We do not represent or warrant to you that any electronic files available through the Platform will be free of Harmful Code or that your use of the Platform will achieve any particular results.
- 18.11 Avaana makes no claims or representations that the Platform may be lawfully accessed and used outside of Australia.
- 18.12 The use of the Platform may not be legal by certain persons or in certain countries. If you access the Platform from outside of Australia, you do so at your own risk and are responsible for compliance with the Applicable Laws.
- 18.13 You acknowledge that despite all reasonable precautions on our part, there is a risk of unauthorised access to, or alteration of, your transmissions of data or of information contained on your computer system or on the Platform. To the maximum extent permitted by law, we accept no liability for any Loss which you may suffer or incur as a result of such activity.
- 18.14 Nothing in these Terms will impose a duty of care upon us in respect of your use of the Platform.
- 18.15 The above disclaimers do not attempt or purport to exclude liability under any statute if, and to the extent, such liability cannot be lawfully excluded (including any guarantee under the Australian Consumer Law).

19. User Warranties

You represent and warrant that at all times and at your own expense:

- (a) you will comply with these Terms;
- (b) all User Content uploaded onto the Platform does not infringe the Intellectual Property rights of others in any way;
- (c) all User Content uploaded on the Platform will be free of Harmful Code;
- (d) you will not use the Platform for any illegal purpose; and
- (e) all User Content uploaded on the Platform will comply with the Community Guidelines.

20. Limitation of liability

20.1 To the maximum extent permitted by law, Avaana's liability under any guarantee, condition or warranty (including, without limitation, any guarantee, condition or warranty of merchantability, acceptable quality, fitness for purpose or fitness for disclosed result), or any other right or remedy, under any legislation or implied into these Terms by any legislation (**Statutory Warranties**) is hereby excluded. Where we are liable under any Statutory Warranties, and any legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties, Avaana's liability for any breach of such Statutory Warranties shall be limited, at Avaana's option, to one or more of the following: (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and (b) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again. You acknowledge and agree that reliance by Avaana on this limitation of liability is fair and reasonable in all the circumstances.

20.2 To the maximum extent permitted by law and without limiting clause 20.1 or the other limitations on Avaana's liability to you as set out in these Terms, Avaana its officers, directors, employees, agents and contractors do not accept any liability for, and you hereby release Avaana from any Claim in relation to, any Loss howsoever caused (including through our negligence), suffered or incurred by you arising out of or in any way related to:

- (a) your access to or use of the Platform and any software or materials comprising the Platform;
- (b) any errors or omissions from the Platform and the content published on the Platform including any technical inaccuracies and typographical errors;
- (c) any errors in or omissions from any third party platforms or content that are directly or indirectly accessed through links on the Platform;
- (d) any errors, omissions, unavailability of or interruption to or from any third party platforms, content or services that are directly or indirectly accessed (including

through links) or used by the Platform);

- (e) any Harmful Code infecting your systems or devices as a result of your use of or access to the Platform;
- (f) any Provider Content and User Content (or the truth or accuracy of Provider Content or User Content); or
- (g) any errors or omissions in Provider Content or User Content published on the Platform including any technical inaccuracies and typographical errors;
- (h) the unavailability of the Platform or any portion thereof;
- (i) any Provider Services provided (or not provided), or actions (or failure to act), of the Provider or any person acting on its behalf;
- (j) your expectations or any other legal liability which arises in respect of the Provider Services including any illness or injury suffered by you directly or indirectly in connection with the performance of Provider Services or otherwise suffered at the Provider's venue or place of performance of the Provider Services;
- (k) the quality, length, safety or legality of any Provider Service;
- (l) the ability of Providers to properly service the needs and requirements of Users.
- (m) any decision or action taken by you in reliance on any materials on the Platform or any linked website or platform.

The above disclaimer does not attempt or purport to exclude liability under any statute if, and to the extent, such liability cannot be lawfully excluded (including any guarantee under the Australian Consumer Law).

- 20.3 To the maximum extent permitted by law, Avaana and/or its Avaana affiliates', contractors', employees', agents', or third-party partners', licensors', or suppliers' total liability to you for all damages, losses, and causes of action arising out of or relating to these Terms or your use of the Platform or your interaction with other Users (whether in contract, tort including negligence, warranty, or otherwise), will not exceed the amount paid by you, if any, to Avaana during the twelve months immediately preceding the date of the claim or one hundred dollars, whichever is greater.

21. General

- 21.1 The laws governing these Terms will be the laws in the State of Victoria, Australia and you irrevocably submit to the exclusive jurisdiction of the courts of Victoria.
- 21.2 Any waiver, in whole or part, of any rights available under these Terms is only valid if it is in writing and is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches only).
- 21.3 If any provision of these Terms is held to be invalid, unenforceable or illegal for any reason, it is to be read down to give it as much effect as possible, or if it is not capable of having any effect at all, it is to be severed from these Terms, in which case, the remainder of these Terms

will continue in full force.

21.4 These Terms constitute the entire agreement between you and Avaana relating to the subject matter in these Terms and may not be modified except in writing, signed by both parties, or by a change to these Terms made by Avaana as set out in these Terms.

21.5 Despite any other provision in these Terms or any other agreement relating to Avaana:

- (a) any consent, approval, requirement, decision or the like referred to in or, contemplated under these Terms to be given, specified or made by Avaana, may be given or withheld, specified or made by Avaana, at its absolute discretion unconditionally or subject to any conditions, from time to time as Avaana in its absolute discretion thinks fit and may be revoked by Avaana, in its absolute discretion at any time; and
- (b) any right which may be exercised by Avaana under these Terms or any other agreement relating to Avaana, may be exercised from time to time as Avaana in its absolute discretion thinks fit,

and Avaana is not obliged to give its reasons for doing so, subject always to Avaana's obligations under the law.

22. Definitions

Account means an account associated with a User who uses or has used the Platform.

Applicable Laws means any and all statutes, regulations, by-laws, ordinances or subordinate legislation, rules or government orders in force from time to time which pertains to your use of, and access to, the Platform in Australia and including those relating to labour and employment such as equal employment opportunity and anti-discrimination, consumer laws, Intellectual Property, privacy such as data collection, access and use, and confidentiality.

Appointment means a booking for Provider Services through the Marketplace Service where at the time of making the Booking, the User books a specific appointment time and date at which to receive the relevant Provider Services.

Avaana means Avaana Pty Ltd ACN 610 520 600.

Booking includes:

- (a) an Appointment; and
- (b) a Voucher.

Cancellation Period means 24 hours, 48 hours or 72 hours prior to the time of an Appointment as determined by the Provider and specified at Checkout.

Checkout means that part of the Marketplace Service pursuant to which a User is required to finalise its Booking for Provider Services and if applicable, pay for the Provider Services the subject of the Booking.

Claim means any allegation, debt, cause of action, liability (whether actual, contingent or

prospective), claim, demand, proceeding, suit, investigation or audit of any nature and whether present or future, fixed or unascertained, actual or contingent, arising at law, in equity, under statute or otherwise.

Community Guidelines means Avaana's community guidelines in respect of Provider Content and User Content accessible from the footer of the Platform.

Harmful Code means any computer virus, trojan, worm, other malicious computer code or other forms of interference that, directly or indirectly, is harmful or disabling or which assists in or enables unauthorised access to or corruption of data.

Intellectual Property means any current or future, registered or unregistered rights in any copyrights, patents, inventions, discoveries, trademarks, designs or confidential information or any rights of a similar nature under the laws of Australia or anywhere else in the world.

Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) of any kind (including liability to a third party).

Marketplace Service means the online marketplace service that allows Users to search, find, compare make Bookings with and which otherwise connects Users with Providers and includes all services provided to Users in connection with the Marketplace Service.

Personal Information has the same meaning given to it as in the *Privacy Act 1988* (Cth).

Platform means the website accessible from www.avaana.com.au and includes the Marketplace Service.

post or **upload** means to make available User Content, information or materials to Avaana (including by email to Avaana's representatives) or Providers including in connection with registration of an Account, the Checkout, the User review process or otherwise through the use of the Platform.

Promo Code means any discount offered by Avaana and redeemable by a User or potential User in connection with Bookings for Provider Services including through the use of a promotional or discount code by a User at Checkout.

Provider means a third party provider of goods and services who offers its Provider Services for Booking through our Platform.

Provider Content means all information, documentation, content, images, video, audio, text, compilations or other information provided to Avaana or uploaded to the Platform.

Provider Contract has the meaning given to that term in clause 3.3.

Provider Page means the internet page or pages and contents of the Provider's designated section of the Platform.

Provider Services means the health, fitness, wellbeing, spa, beauty and other goods and services which Providers offer for sale and Booking through the Platform.

User has the meaning given to that term in the Introduction.

User Content means all information including reviews, account information, messages, audio, video, photos, text, images, compilations or other information uploaded to the Platform or otherwise provided to Avaana by a User including pursuant to a User review, upon Checkout or as a result of the creation of an Account.

Voucher means a booking where a User books a Provider Service with a specific Provider at a specific price but where, at the time of making the booking, the User does not book a time and/or date for receiving that Provider Service but will be sent an electronic voucher in respect of the same.

23. Interpretation

23.1 In these Terms, unless the context otherwise requires:

- (a) an obligation on you in these Terms becomes operative as from the date that you access the Platform;
- (b) a reference to these Terms includes any hyperlinks, variations, amendments to or extensions of these Terms;
- (c) any agreement, warranty, representation or obligation which binds or benefits two or more persons under these Terms, binds or benefits those persons jointly and severally;
- (d) headings appear for convenience only and do not form part of these Terms;
- (e) a reference to:
 - (1) the singular includes the plural and vice versa;
 - (2) any gender includes all other genders;
 - (3) an entity includes an individual, a body corporate and a government;
 - (4) any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced;
 - (5) “including” in these Terms means “including without limitation”;
 - (6) any thing or amount is a reference to the whole and/or each part of it;
 - (7) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (8) a day means a period of time commencing at midnight and ending 24 hours later;
 - (9) a week means a 7 day period commencing on Monday and concluding on the following Sunday (inclusive);
 - (10) a month means a calendar month;
- (f) a reference to a statute or statutory provision includes any statutory provision which:

(1) amends, extends, consolidates or replaces; or

(2) has been amended, extended, consolidated or replaced by,

that statute or statutory provision and any other orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

(g) examples contained in these Terms are descriptive only and are not intended to be exhaustive; and

(h) where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.