

# Avaana Pty Ltd

## Provider Terms and Conditions

*Effective: May 2017*

Welcome to [www.avaana.com.au](http://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 (defined as “**Avaana**”, “**we**”, “**our**” and “**us**”).

These Provider Terms and Conditions (**Terms**) form a legally binding agreement between you (being, a Provider or Practitioner) and Avaana with effect from the Commencement Date. Capitalised words and expressions in these Terms have the meaning given to them in clause 12. In addition to these Terms, you agree to be bound by the Avaana Terms of Use and Booking Conditions and also the Community Guidelines.

Please read these Terms carefully and if you have any questions in relation to these Terms, please obtain professional advice.

If you do not accept these Terms, then you must not access the Platform or use the Avaana Services, other than as a Client or a Visitor.

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### 1. Account registration

#### 1.1 Registering for an Account

- (a) To become a registered Provider, you must register for a Provider Account in relation to your access to and use of the Platform and the Avaana Services as a Provider, by completing the Signup Form and uploading to the Platform all Provider Content required to create a Provider Account.
- (b) If you are a Provider, you may also register a Practitioner Account for each of your Practitioners by uploading the email address of the Practitioner through the Signup Form or Business Dashboard.

#### 1.2 Access to Accounts

- (a) To access and use the Platform and the Avaana Services, you will be required to login to your Account using:
  - (1) your email address as nominated in a Signup Form or as updated by you through the Business Dashboard; and
  - (2) a password nominated by you through the Platform.
- (b) You may change the password to your Account at any time by following instructions on the Platform.

#### 1.3 Fair use

By using the Platform, you agree that, in addition to exercising common sense:

- (a) you will not create more than one Account;
- (b) you will not create another Account if Avaana has already disabled your Account, unless you have written permission from Avaana to do so;
- (c) you will not share your password with any person; and
- (d) you will not log in or attempt to access the Platform through unauthorised third-party software or clients.

#### **1.4 Conditions of registration for Accounts**

You agree that it is a condition of creation of an Account and you continued use of the Platform and the Avaana Services that you:

- (a) are at least 18 years of age and are otherwise capable of entering into a legally binding contract;
- (b) hold a valid email address;
- (c) have not been previously suspended or removed from the Platform by Avaana;
- (d) have all necessary and desirable qualifications and certifications required to perform the Provider Services in accordance with Applicable Laws or which may otherwise be required or recommended by any recognised professional or industry body that regulates the Provider Services which you provide;
- (e) have all due skill and expertise to provide your Provider Services to the highest industry standards; and
- (f) have the legal capacity, power and authority to agree to be bound by these Terms and perform the obligations contained in these Terms.

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## **2. Provider Content**

### **2.1 Provider Content generally**

- (a) You represent, warrant and undertake to Avaana that all Provider Content posted, uploaded or supplied to Avaana in connection with these Terms:
  - (1) is true, accurate, current, and complete and not misleading or deceptive;
  - (2) complies with these Terms;
  - (3) is not contrary to the Community Guidelines;
  - (4) is not illegal and will not constitute or encourage any contravention of any Applicable Laws by any person;
  - (5) does not violate any other entity's Intellectual Property Rights; and
  - (6) is capable of being validly and irrevocably licensed to Avaana as set out in

clause 2.1(c).

- (b) All Provider Content stored on the Platform is owned by the Provider and not Avaana. You are solely responsible for all Provider Content that you upload on the Platform or which is capable of being transmitted through the Platform to Site Users.
- (c) You acknowledge and agree that upon uploading any Provider Content to 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 Avaana, 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 Provider 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 Provider Content is removed from the Platform.

## **2.2 Photographs**

- (a) You should only upload photographs to the Platform which have been taken at your own venue or which are of your Practitioners and must ensure that you have the right to use any photographs which are uploaded to the Platform.
- (b) If you do not have any photographs available to upload, Avaana reserves the right to upload suitable photographs for the purposes of your Provider Page and otherwise in connection with your Account or use of the Avaana Services.

## **2.3 Avaana's rights in relation to the Provider Content**

You hereby grant Avaana the right to:

- (a) 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 your Provider Content anywhere, for any purpose and in any form, without any compensation to you including in connection with the Platform, the Channels and the provision of Avaana Services;
- (b) refuse to do any of the things specified in clause 2.3(a) in respect of any Provider Content without giving any reason;
- (c) remove, edit, cut-down or otherwise amend Provider Content (including Provider Content which is to be published on your Provider Page), including where such Provider Content does not, in Avaana's reasonable opinion comply with the Community Guidelines;
- (d) amend the Service Price for any Provider Service offered or advertised on the Platform such that it complies with clause 3.3; or
- (e) make use of search engine optimisation services, Channels and other mechanisms that embody, incorporate or quote (in whole or part) the trading name of the Provider, any brands used in connection with the Provider Services, images, logo, video and other content comprising the Provider Content.

## **2.4 Backup**

Avaana encourages you to keep a back-up copy of any of your Provider Content. In no event will Avaana be liable for the deletion, loss, or modification of any Provider Content.

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## **3. Appointments**

### **3.1 Provision of Avaana Services**

In consideration of the payment by you of the Fees and Third Party Fees set out in clause 4 and the performance of your obligations under these Terms, Avaana agrees to provide to you one or more of the applicable Avaana Services which includes the ability to advertise and sell Provider Services using the Marketplace Service.

### **3.2 Agent for Bookings**

In respect of all Provider Services advertised by you on the Platform, Avaana shall act and is hereby appointed by you as the Provider's agent to:

- (a) accept and conclude Bookings (including Appointments) with Clients;
- (b) manage cancellations of Appointments and assist with rescheduling of Appointments; and
- (c) except where the Pay By Cash Option is used by a Client, collect and process payments on behalf of the Provider.

Nothing in these Terms shall prevent or limit you from remaining fully responsible and liable for the performance, provision or supply of Provider Services to Clients.

### **3.3 Pricing of Provider Services**

- (a) You must at all times supply the Provider Services through the Marketplace Service at a price which is the same as or more affordable to the Client than the best available price offered to the general public at your own venue (or other place where the Provider Services are performed) or on your own website.
- (b) If a Client provides proof of a better price available to the general public at your own venue (or other place where the Provider Services are performed) or on your own website for Provider Services booked through the Marketplace Service, Avaana reserves the right to refund the Client the difference and reduce the amount paid to the Provider in connection with those Provider Services accordingly.
- (c) The Provider acknowledges and agrees that Avaana may offer Promo Codes to Site Users and Clients in connection with their use of the Platform, which they may apply or redeem in connection with the purchase of Provider Services. The redemption of a Promo Code by any Client against a Booking will not effect:
  - (1) the calculation of any Fees or Third Party Fees due and payable by the Provider to Avaana in accordance with clause 4; or
  - (2) the balance of any Provider Fees payable to Providers (after the deduction of

any Fees or Third Party Fees payable to Avaana) in accordance with clause 4.

### **3.4 Appointment Availability**

- (a) You are solely responsible for ensuring that the information on each Practitioner's Calendar regarding the time and date availability of the Practitioner to accept Appointments is kept up to date at all times, so that potential Clients are able to view the accurate time and date availability at the time of making an Appointment.
- (b) The Platform may use integration tools (**Integration Tools**) to assist Providers to synchronise the time and date availability of their Practitioners in accordance with clause 3.4(a), and:
  - (1) you agree and acknowledge that an Integration Tool may not be available for use by you, in which case, the Calendar will need to be used to manage time and date availability for the purposes of complying with your obligations under these Terms;
  - (2) even if an Integration Tool is available for your use, Avaana does not represent or warrant that the Integration Tool will provide uninterrupted, timely, secure, or error-free information to Avaana or the Platform regarding your time and date availability and we shall not be responsible for any Loss whatsoever incurred by you as the result of:
    - (A) the failure of any Integration Tool to properly or accurately upload your time and date availability onto the Platform; or
    - (B) any requirement to obtain the approval of any licensor of any practice management software or system;
  - (3) the use of an Integration Tool does not in any way limit your obligations under clause 3.4(a).

### **3.5 Acceptance of Appointment and performance of Provider Services**

- (a) You acknowledge and agree that Avaana is a real-time appointment booking marketplace and that an Appointment is automatically accepted by Avaana as agent for the Provider at the time and date selected for the Appointment by the Client via the Marketplace Service.
- (b) You acknowledge that failure by you or any of your Practitioners to honour an Appointment at the time and date selected by the Client may result in significant financial and reputational damage to Avaana and that, subject to clause 3.6, may result in the forfeiture by you of any Provider Fees due to you in connection with these Terms in respect of such Appointment.
- (c) Following notification of an Appointment to you, you will be responsible for confirming receipt of the Appointment by email to Avaana within 4 working hours of receipt.

### **3.6 Cancelling and Rescheduling Appointments**

- (a) A Client must be able to cancel (and receive a full refund) or reschedule an

Appointment up until 24, 48 or 72 hours before the time of the Appointment (such timeframe to be selected by you via your Business Dashboard or in the absence of a selection, 48 hours) (**Cancellation Policy**).

- (b) Upon request, Avaana will offer and provide to a Client a refund for an Appointment which is cancelled by the Client (and unable to be rescheduled) in accordance with your Cancellation Policy.
- (c) If a Client wishes to change the date and/or time of an Appointment, you must use your best endeavours to offer the Client a suitable alternative booking time and/or date.
- (d) In the event that you are unable to fulfil an Appointment after a request by the Client to change the date and/or time of the Appointment, Avaana will treat the Appointment as cancelled by the Client and if cancelled in accordance with your Cancellation Policy, will refund the Client the amount paid by the Client in respect of the Appointment.
- (e) You may only reschedule an Appointment with a Client in exceptional circumstances (such circumstances to be reasonably determined by Avaana). If You wish to change the date and/or time of an Appointment in such exceptional circumstances, in the event that the Client is unable or unwilling to agree to such change, Avaana will treat the Appointment as cancelled by you and will refund the Client the full value of the Appointment. However, Avaana will still require you to pay the applicable Fees and Third Party Fees that would have been due from you in respect of that Appointment. For the avoidance of doubt, the fact that you may having another appointment booked at the same time and date of the Appointment, does not constitute exceptional circumstances for the purposes of this clause 3.6(e).

### **3.7 Vouchers**

- (a) If you sell any of the types of Provider Services described in clause 3.7(d), those specific goods and services will be advertised for sale and may be purchased through our Platform by way of Voucher.
- (b) Unless otherwise agreed between you and the Client, a Voucher (and your associated obligation to perform the Provider Services or provide the goods or services the subject of the Voucher) expires at 5:00pm Australian Eastern Standard Time on the date that is 12 months from the date of the Client's purchase of the Voucher.
- (c) You are responsible for contacting a Client who purchases a Voucher for your Provider Services in order to organise the redemption of the Voucher.
- (d) You must:
  - (1) if the relevant Provider Services the subject of the Voucher is a multiple appointment or multiple session pack (other than Provider Services specified under clause 3.7(d)(2)), use its best endeavours to accommodate the time(s) and date reasonably requested by the Client in relation to the redemption(s) of their Voucher.

- (2) 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), to the extent that the information is not on your website or has not otherwise been provided to Avaana, you must provide Avaana with all reasonable details in relation to the date(s) and time(s) pursuant to which the Client can redeem the Voucher.
- (3) if the relevant Providers Services the subject of the Voucher is a product or goods, securely deliver the Product to the Client's address (as notified to you by Avaana) within 7 Business Days of the purchase of the Voucher. For the avoidance of doubt, Avaana does not bear any liability in connection with the delivery of such products to the relevant Client.

### **3.8 No Shows**

- (a) In respect of Appointments made using the Pay By Cash Option, the Marketplace Commission and Third Party Fees (if any) shall be payable for all such Appointments except where you have notified Avaana within 24 hours of the date the Appointment was booked for, indicating that the Client has not arrived for their Appointment as scheduled (**No Show**).
- (b) For the avoidance of doubt, if a No Show has not been notified to Avaana by email to providers@avaana.com.au within 24 hours of the time and date of the Appointment, the Appointment will be treated by Avaana as fulfilled and Avaana shall be entitled to receive the applicable Fees and Third Party Fees in respect of that Appointment.

### **3.9 Performance of Provider Services**

- (a) In the case of an Appointment, you must provide the relevant Provider Services to the Client at the specified date and time selected by the Client for the Appointment.
- (b) In the case of all Bookings, you must provide the relevant Provider Services to the Client to the highest industry standards.

### **3.10 Fair Use of the Avaana Services**

- (a) You shall not solicit Site Users or Clients to make Bookings otherwise than through the Platform or Channels (as applicable).
- (b) Where a Client makes a Booking and you encourage that Client to cancel their Booking and make a separate booking directly with you, you shall be in breach of these Terms.
- (c) If Avaana has reasonable grounds to suspect that you have made any direct or indirect attempt to avoid paying any Fees or Third Party Fees, for example by fraudulently indicating that the Appointment fulfilled using the Pay By Cash Option as a No Show, you will be in breach of these Terms and shall give Avaana the right, without limiting other remedies available to it, to withhold and retain any payments due to the Provider under these Terms.
- (d) You must not use the Platform to:
  - (1) post or upload advertisements for competitors of Avaana or post Provider Content or other content that contains links to any Platform competitive with

Avaana;

- (2) except for Premium Providers, post or upload any information in a manner designed to encourage the Client to make a separate booking for Provider Services or to otherwise purchase goods or services advertised for sale by you, other than through the Marketplace Service (for example, including your business telephone number, website, email address or other contact information in your business profile or practitioner profile published on your Provider Page);
- (3) advertise sexual services or seek individuals for Bookings of a sexual nature.

### **3.11 No representations**

- (a) Avaana makes no representations, warranties or undertakings to you except as expressly set out in these Terms and without limiting the foregoing:
  - (1) Avaana does not represent that you will receive any Booking via the Marketplace Service or that Avaana will assist you to fill empty appointment slots or generate revenue.
  - (2) Where a Client successfully secures an Appointment where the Client chooses to pay for the Provider Service using the Pay By Cash Option, Avaana makes no guarantee or representation as to the financial standing of the Client or the Client's capacity to pay for the Provider Services.
- (b) There are risks in dealing with strangers. You assume all risks associated with dealing with Clients with whom you come in contact through the Platform.

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## **4. Payments and Fees**

### **4.1 Payment of Fees to Avaana**

In consideration of the performance by Avaana of the Avaana Services, if you are a Provider and subject to any Trial Period, you must pay any and all Fees and Third Party Fees applicable to your use of the Avaana Services in accordance with this clause 4.

### **4.2 Marketplace Commission**

- (a) If you are a Provider, you must pay to Avaana:
  - (1) the Marketplace Commission; and
  - (2) all Third Party Fees,in respect of each Booking by a Client for Provider Services through the Marketplace Service (**Marketplace Booking**), in accordance with Avaana's Standard Payment Terms.
- (b) The Marketplace Commission for a Marketplace Booking shall be calculated as the greater of:



- (1) the Applicable Rate multiplied by the Service Price for the relevant Provider Service the subject of the Marketplace Booking (and for the avoidance of doubt, not the Checkout Price paid by the Client); and
- (2) the Minimum Fee.

#### **4.3 Premium Fees**

If you are a Premium Provider, you must pay to Avaana the Premium Subscription Fees monthly in advance in accordance with Avaana's Standard Payment Terms.

#### **4.4 Collection of Provider Fees**

- (a) You acknowledge and agree that Avaana may collect all Provider Fees payable to you in respect of Bookings. You agree that successful receipt of payment by Avaana will discharge a Client's debt to you for Provider Services.
- (b) You acknowledge and agree that Avaana may collect payment for all of Our Invoices for Fees and Third Party Fees by way of deduction from the Provider Fees payable to the Provider in respect of Bookings.
- (c) Without limiting clause 4.4(b), Avaana reserves the right to deduct:
  - (1) any sums payable to Avaana by the Provider including any unpaid amounts payable to Avaana pursuant to clause 4.5(c); and
  - (2) any refunds or chargebacks relating to Bookings,from any balance collected by Avaana on behalf of the Provider, prior to onward payment of the balance of any Provider Fees due to the Provider in accordance with clause 4.5.

#### **4.5 Invoicing and payment**

- (a) Avaana will use its best endeavours to issue Our Invoice to the Provider on the 28th of each calendar month (the **Invoice Statement**) which will set out:
  - (1) Any balance carried forward from the last Invoice Statement, if any;
  - (2) what Avaana owes the Provider in respect of Bookings in the period since the last Invoice Statement, if any;
  - (3) what the Provider owes Avaana in respect of Fees and Third Party Fees in the period since the last Invoice Statement, such amounts to be deducted from any amount owed to the Provider pursuant to 4.5(a)(2) above, if any; and
  - (4) the resulting account balance (the **Closing Balance**) payable either by Avaana to the Provider or the Provider to Avaana.
- (b) If the Closing Balance results in an amount payable to the Provider, Avaana will transfer the Closing Balance to the Provider within 3 to 5 Business Days of the date of the Invoice Statement and no further action in respect of that Invoice Statement will

be required by the Provider.

- (c) If the Closing Balance results in an amount payable to Avaana, the Partner will be required to transfer the Closing Balance to Avaana in accordance with our Standard Terms to the bank account details listed in the Invoice Statement.
- (d) If the Closing Balance is zero, the Invoice Statement will state that the Closing Balance is settled and there is nothing further for Avaana or the Provider to do in respect of that Invoice Statement.
- (e) All payments due from Avaana to the Provider shall be made via bank transfer using the bank details provided by the Provider to Avaana in its Signup Form or Business Dashboard and it is the Provider's responsibility to ensure that these details are correct. Avaana will only make payments due to the Provider directly to the Provider and cannot make payments to any third party.

#### **4.6 Payment Gateway Fees**

Payment processing services for Providers on the Platform are provided by Stripe and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the **Stripe Services Agreement**). By agreeing to these Terms or continuing to operate as a Provider on the Platform, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of Avaana enabling payment processing services through Stripe, you agree to provide Avaana accurate and complete information about you and your business, and you authorize Avaana to share it and transaction information related to your use of the payment processing services provided by Stripe.

#### **4.7 API Fees**

In addition to the Fees, you agree to pay Avaana all transaction costs and fees incurred by Avaana in connection with any API Information obtained by Avaana at the time of the making of a Booking including in connection with the Integration Tools pursuant to clause 3.4(b) (**API Fees**).

#### **4.8 Amendments to Fees**

- (a) You acknowledge that Avaana may amend the Fees and the Third Party Fees (including, without limitation, adding a new fee or charge or replacing an existing fee or charge) at any time by notice to you (**Pricing Change**). Your continued use of the Platform and the Avaana Services following either form of notification will represent an agreement by you to be bound by the Fees and the Third Party Fees as amended by the Pricing Change.
- (b) If as a result of a Pricing Change, you wish to change the Avaana Services you receive, you must provide written notice to Avaana to this effect within 14 days of the Pricing Change in order to prevent the Pricing Change coming into effect for that Provider.

#### **4.9 Tax**

All Fees, Third Party Fees and payments are, unless otherwise stated, inclusive of GST (as

defined under a *New Tax System (Goods and Services Tax) Act 1999* (Cth)) (**GST**).

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## **5. Interaction with Clients**

### **5.1 Confidential Information and Personal Information**

- (a) You must keep all Client Content and information in respect of Bookings confidential and only disclose Confidential Information the subject of a Booking to persons within your business who have a need to know such information.
- (b) You acknowledge that all Client Information provided to you in respect of a Client is Personal Information and is confidentially provided to you for the sole purpose of enabling you to provide the Provider Services to the relevant Client.
- (c) You must comply with the Privacy Act with respect to the collection, use, disclosure, accuracy, security and openness of all Personal Information collected by you in connection with these Terms.

### **5.2 Communications with Clients and complaints**

- (a) All communications with Clients should be in accordance with the Community Guidelines.
- (b) You must promptly deal with any enquiries, matters or issues relating to Bookings or potential Bookings including dealing with Client complaints.
- (c) You are fully responsible and liable for the performance, provision or supply of your Provider Services to Clients and Avaana is in no way liable to Clients for the Provider Services they receive from you.
- (d) Avaana shall refer any Client complaints it receives to you and you shall acknowledge all complaints, and shall respond to the relevant Client within 48 hours of your receipt of a complaint (whether the complaint has come directly from the Client or via Avaana).
- (e) You shall make all efforts to reach a resolution to any complaints within 14 days and must notify Avaana of any correspondence between you and the Client relating to the complaint and generally keep Avaana apprised of its progress and the status of the complaint.
- (f) If Avaana considers it to be fair in all the circumstances given the nature and of the complaint, Avaana may at our sole discretion elect to:
  - (1) give the Client a Promo Code for the value of the disputed/complained about amount of the Booking; or
  - (2) as a last resort or in extreme circumstances and always at our sole discretion refund the disputed/complained about amount directly to the Client,

in which case, we will charge the value of the disputed/complained about the subject of the Promo Code or refund, from you.

### **5.3 Client Reviews**

- (a) You hereby acknowledge and accept that the Platform includes a reviewing platform, upon which Clients may post publicly viewable reviews about their experiences with Avaana and with you and your business (particularly in connection with the Provider Services) (**Client Reviews**).
- (b) To the maximum extent permitted by law, you shall be directly responsible to any professional or regulatory bodies of which you are a member, which prohibit the Provider from being the subject of, or soliciting Client Reviews or testimonials.
- (c) You acknowledge and agree that you may from time to time be subject to negative Client Reviews and/or feedback from consumers, which is outside of Avaana's control.
- (d) For the avoidance of doubt, you shall have no right to any remedy as a result of any Client Review naming or referring to the Provider. However, if you, acting reasonably, feels that any Client Review is defamatory of the Provider or any person or in some other way is a violation of any person's legal rights, you may report that Client Review to Avaana by email to providers@avaana.com.au. In such case, Avaana shall review the same and in its sole discretion take any action it deems necessary or desirable (including, for example, removing or amending the relevant piece of Client Review).

### **5.4 Acknowledgement**

- (a) Avaana makes no representations in relation to any Client Content, Provider Content or information available on or otherwise provided to you through the Platform.
- (b) While Avaana reserves the right in its absolute discretion to remove Provider Content, Client 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.

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## **6. The Platform and the Software Services**

### **6.1 Limited licence**

In consideration of the payment to Avaana of the Fees and you performing all of your other obligations under these Terms, Avaana grants to you a personal, non-exclusive, non-transferable and fully revocable licence to use the applicable Software Services in accordance with this clause 6.

### **6.2 Use**

- (a) You may use the applicable Software Services for the purpose of processing and scheduling bookings of Provider Services for and on behalf of yourself only.
- (b) By accessing and using the Platform or the Software Services, you assume all risks associated with such access and use.
- (c) 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. You

have no right to technical support in respect of the Software Services but Avaana will attempt to assist you by email, should any technical issues arise in connection with your use of the Software Services.

- (d) To the fullest extent permitted by law, Avaana does 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. Avaana does 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.
- (e) You understand and accept that Avaana uses third party vendors and hosting partners to provide the hardware, software, networking, storage, and related technology required to run the Software Services. You also acknowledge and agree that Avaana shall have administrator's access to all parts of the Software Services, including those parts that have been specifically designed for use by you.
- (f) You shall not reproduce, duplicate, copy, sell, resell or exploit the whole or any part of the Software Services, or allow any third party (including group companies of the Provider) to use or access the Software Services without express prior written permission from Avaana (which may be denied or granted on such terms as Avaana in its sole discretion may determine).
- (g) Avaana makes no claims or representations that the Platform may be lawfully accessed and used outside of Australia. 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.
- (h) Avaana does not warrant:
  - (1) that the Software Services will meet your specific requirements;
  - (2) that the Software Services will be uninterrupted, timely, secure, error-free or free of Harmful Code;
  - (3) that any information or results that may be obtained from the use of the Software Services will be accurate or reliable;
  - (4) that the quality of any products, services, information, or other material purchased or obtained by you through the Software Services will meet your requirements or expectations; or
  - (5) that any errors in the Software Services will be corrected.
- (i) You agree that in respect of your use of the Software Services, to the maximum extent permitted by Applicable Laws, Avaana shall not be liable for any Loss including of income or profits, loss of contracts, loss of goodwill, loss of data, or other tangible or intangible losses or for any indirect or consequential loss or damage (even if Avaana has been advised by you of the possibility of such loss or damage) resulting from:

- (1) your use of, or inability to use, the Software Services;
  - (2) unauthorised access to or alteration of your transmissions or data;
  - (3) statements or conduct of any third party in connection with the Software Services; or
  - (4) any other matter relating to the Software Services.
- (j) Avaana 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.
- (k) 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.

### **6.3 Acknowledgements**

- (a) 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, Avaana accepts no liability for any Loss which you may suffer or incur as a result of such activity.
- (b) Nothing in these Terms will impose a duty of care upon Avaana in respect of your use of the Platform.

### **6.4 Platform modifications**

Avaana reserves the right to make any changes to the Software Services and the Avaana Services as are considered necessary or desirable, at any time, without notice.

### **6.5 Disable Platform**

- (a) Avaana reserves the right, at any time, to disable, close or render inaccessible the Platform (or parts of the Platform) for so long as Avaana desires for any reason whatsoever, and without the need to provide any reasons.
- (b) To the maximum extent permitted by law, Avaana does not accept liability for any Loss which a Provider or its Practitioners may suffer or incur as a result of such actions.

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## **7. Applicable Laws**

### **7.1 Lawful use**

- (a) You must use the Platform and the Avaana Services for lawful purposes only and ensure that all access to, or use of, the Platform or the Avaana Services by you and your Practitioners 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 Avaana or accessed through the Platform in a manner which complies with all Applicable Laws.

- (b) You warrant, represent and undertake that you shall comply with all Applicable Laws and advertising regulations in the marketing, sale and provision of the Provider Services and shall obtain all licences, consents, authorities and insurance it is either necessary or reasonably prudent for you to obtain in respect of all of your business activities and personnel (but especially in connection with the provision of Provider Services).
- (c) Unless otherwise stated, you are permitted to download content which is clearly contemplated for download 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. Avaana does not permit any copy, modification, alteration, distribution, sale, broadcast or transmission of any downloaded material.

## **7.2 Misuse and interference**

You must not:

- (a) attempt to gain unauthorised access to any part of the Platform or the Software Services;
- (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 or the Software Services;
- (c) disable any protection software associated with the Platform or the Software Services;
- (d) send or store any Harmful Code when using the Platform or the Software Services;
- (e) use any data mining, robots or similar data gathering or extraction methods on the Platform or the Software Services;
- (f) reverse engineer or decompile any parts of the Platform or the Software Services;
- (g) except with the prior consent of Avaana, frame or link to any Avaana content or information available on the Platform or the Software Services;
- (h) misuse any content that appears on the Platform, in any way;
- (i) use any feature of the Platform in a manner that Avaana reasonably determines is inappropriate or not intended or is otherwise in breach of the Community Guidelines;  
or
- (j) assign your rights or obligations under these Terms.

## **7.3 Intellectual Property Rights**

- (a) Except for the Provider Content and subject to clause 7.3(b), all Intellectual Property Rights in the materials found on the Platform or the Software Services (including

source code, object code, text, graphics, logos, icons, sound recordings and software) is owned by Avaana or third parties.

- (b) 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:
  - (1) 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
  - (2) 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.
- (c) Except for any trademarks comprising the Provider Content or trademarks used on the Platform owned by a third party, trademarks used on the Platform are Avaana's trademarks (registered or unregistered) or trademarks of third parties. If you use any trademarks owned by Avaana, in reference to Avaana, the Platform or the Avaana Services, you must include a statement attributing that trademark to Avaana. You must not use any of our trademarks or trademarks of third parties featured on the Platform:
  - (1) in, or as the whole or part of, your own trademarks;
  - (2) in connection with any business, products or services which are not Avaana's;
  - (3) in a manner which may be confusing, misleading or deceptive to any person; or
  - (4) in a manner that disparages Avaana, the third party owners of the trademarks or the Platform.

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## 8. Indemnity

### 8.1 Indemnity

You indemnify and must keep indemnified Avaana, its officers, directors, employees, agents and contractors (**Those Indemnified**) from and against any Loss of any kind which Those Indemnified suffer or incur arising out of or in direct or indirect connection with:

- (a) any breach of these Terms by you or your Practitioners (including, without limitation, any warranty given under these Terms) including any failure to pay Fees or Third Party Fees;
- (b) your access to, or use of, the Platform including in connection with any information you post or upload to the Platform or any linked website or platform (including Stripe);
- (c) any decision or action taken by you in reliance on any information or materials on the



Platform and any linked website;

- (d) any wilful misconduct by you;
- (e) any or other negligent act or omission by you;
- (f) any Claim against Those Indemnified by any third party (including Clients) relating to the supply of the API Information through the Integration Tools;
- (a) any Claim against Those Indemnified by any third party (including Clients) relating to an allegation or finding that use of the Integration Tools or the API Information infringes the Intellectual Property Rights of any third party;
- (g) any Claim against Those Indemnified brought by any Client or third party relating to the Provider Services provided (or not provided), or actions (or failure to act), of you or any person (other than Avaana) acting on your behalf;
- (h) any Claim against Those Indemnified for any failure to fulfil the Client's expectations or for any other legal liability which arises in respect of the Provider Services including any illness or injury suffered by any Client directly or indirectly in connection with the performance you or the Practitioners of Provider Services or otherwise suffered at the Provider's venue or other place of performance of the Provider Services;
- (i) any Claim against Those Indemnified in connection with the quality, length, safety or legality of any Provider Service;
- (j) any Claim against Those Indemnified in connection with the ability of the Provider or a Practitioner to properly service the needs and requirements of Clients; and
- (k) any Claim against Those Indemnified 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 any professional or regulatory bodies of which you are a member, which prohibit you from being the subject of, or soliciting Client Reviews or testimonials.

## 8.2 Third Party Beneficiaries

You acknowledge 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 8.1 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, Avaana may amend 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.

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## 9. Limitation of Liability

### 9.1 Limitation of liability

- (a) 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 Avaana is 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:

- (1) 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
  - (2) 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.
- (b) To the maximum extent permitted by law and without limiting clause 9.1(a) 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:
- (1) your access to or use of the Platform or any of the Avaana Services (including the Software Service);
  - (2) any errors, omissions, unavailability of or interruption to or in connection with the Platform (including the Software Services), the Integration Tools or the Avaana Services (including the Software Services);
  - (3) any Provider Content and Client Content (or the truth or accuracy of Provider Content or Client Content);
  - (4) any errors, omissions, unavailability of or interruption to or in connection with the content published on the Platform or in connection with the Avaana Services (including the Client Content and the Provider Content) including any technical inaccuracies and typographical errors;
  - (5) 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;
  - (6) any Harmful Code infecting your systems or devices as a result of your use of or access to the Platform;
  - (7) any decision or action taken by you in reliance on any information or materials on the Platform and any linked website;
  - (8) any Claim brought against you 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, Client Reviews or the performance of the Provider Services; and

- (9) any professional or regulatory bodies of which you are a member, which prohibit you from being the subject of, or soliciting Client Reviews or testimonials.

## **9.2 Third Parties**

Avaana provides links on the Platform to other third party websites 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. Avaana does not endorse any information on those linked sites or any associated organisation, product or services.

## **9.3 Limitation of damages**

To the maximum extent permitted by law, Avaana and/or its affiliates', contractors', individuals', agents', or third-party Providers', 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 Clients (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.

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# **10. These Terms**

## **10.1 Legally binding agreement with Avaana**

- (a) These Terms form a legally binding agreement between you and Avaana with effect from the Commencement Date and apply to your respective access to, and use of the Platform and the Avaana Services.
- (b) In accessing or using the Platform or the Avaana Services, you acknowledge that you have read, understood and agrees to be bound by these Terms, the Avaana Terms of Use and Booking Conditions and also the Community Guidelines.
- (c) If you do not accept these Terms, then you must ensure that you and each Practitioner associated with you does not access the Platform and must immediately cease to use the Avaana Services, other than in your capacity as a Visitor or a Client.

## **10.2 Amendment to Terms**

Avaana reserves the right to amend these Terms at any time. Any amendments will be effective immediately upon notification on the Platform or to you. Continued use of the Platform following such notification will represent an agreement by you to be bound by these Terms as amended.

## **10.3 Termination by Provider or Practitioner**

- (a) You agree that your only remedy with respect to any dissatisfaction with:

- (1) the Platform or the Avaana Services;
- (2) these Terms;
- (3) the Avaana Terms of Use and Booking Conditions and the Community Guidelines;
- (4) any change in Fees or Third Party Fees;
- (5) any policy or practice of Avaana in operating the Platform; or
- (6) any content or information transmitted through the Platform (including Provider Content,

is to provide notice of cancellation of your Provider Account by email to [providers@avaana.com.au](mailto:providers@avaana.com.au). Subject to clause 10.3(b), these Terms will terminate on the date that is 14 days after Avaana receives your notice of termination.

- (b) Termination of these Terms will not end those provisions that are capable of surviving and in particular, you will remain liable to pay any Fees or Third Party Fees due and payable in relation to the period prior to the effective date of termination of these Terms pursuant to clause 10.3(b).

#### **10.4 Termination of Premium Services**

A Premium Provider may terminate the Premium Services at any time by email to Avaana at [providers@avaana.com.au](mailto:providers@avaana.com.au).

#### **10.5 Termination by Avaana**

- (a) Avaana may, in its absolute discretion, suspend or terminate your access to all or any part of the Platform, including if Avaana considers that you are in breach of any provision of these Terms, and without the need to provide reasons.
- (b) You acknowledge and agree 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.

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### **11. General**

#### **11.1 Choice of law**

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 that State.

#### **11.2 Obligations of confidentiality**

- (a) Each party agrees to ensure that the Confidential Information of the other party (**Disclosing Party**) is kept confidential.
- (b) A party who receives the Disclosing Party's Confidential Information (**Receiving Party**) must not:

- (1) directly or indirectly divulge or communicate or otherwise disclose the Confidential Information of the Disclosing Party, in whole or part, to any third party; or
  - (2) use any of the Confidential Information of the Disclosing Party for any purpose other than exercising its rights or fulfilling its obligations under these terms and conditions,
  - (3) without the express prior written consent of the Disclosing Party.
- (c) A Receiving Party must:
  - (1) take all precautions that are reasonably necessary to prevent any unauthorised disclosure of the Disclosing Party's Confidential Information to third parties or unauthorised use of such Confidential Information; and
  - (2) inform the Disclosing Party of any suspected or actual unauthorised disclosure or use of such Confidential Information.
- (d) A Receiving Party will not be in breach of its obligations with respect to disclosure of the Disclosing Party's Confidential Information if it discloses information that:
  - (1) relates to the existence of and the general nature of these terms and conditions to the Receiving Party's shareholders or as an announcement on any stock exchange upon which the Receiving Party is listed;
  - (2) is, or subsequently enters, the public domain, other than through a breach by it of its obligations under this clause 11.2;
  - (3) is required to disclose by statute, court order or a person acting under the authority of statute or such order;
  - (4) was developed independently by it, without the use of any of the Disclosing Party's Confidential Information; or
  - (5) was provided to it by a third party who was not subject to any obligation or duty of confidentiality at the time it was provided to the Receiving Party.

### **11.3 Waiver**

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).

### **11.4 Severability**

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.

### 11.5 Entire agreement

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 clause 10.2. These Terms supersede any past correspondence or discussions between you and Avaana.

### 11.6 Avaana decisions

Despite any other provision in these Terms:

- (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.

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## 12. Definitions

In these Terms:

**Account** means a Provider Account or a Practitioner Account.

**API** means Application Programming Interface.

**API Fees** has the meaning given in clause 4.7.

**API Information** means any information provided to Avaana pursuant using the Integration Tools.

**Applicable Laws** means any and all laws, statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time which pertains to a Provider or any Practitioner's:

- (a) use of or access to the Platform and the Avaana Services;
- (b) the uploading of any Provider Content on the Platform; and
- (c) the provision of any Provider Services,

and includes those laws, statutes, regulations, by-laws, ordinances or subordinate legislation relating to health services, equal opportunity, anti-discrimination, immigration, trade practices, fair trading, Intellectual Property Rights, Personal Information, privacy and confidentiality.

**Appointment** means a booking for Provider Services through the Marketplace Service where

at the time of making the Booking, the Client books a specific appointment time and date at which to receive the relevant Provider Services.

**Avaana, we, our and us** means Avaana Pty Ltd ACN 610 520 600.

**Avaana Services** includes:

- (a) the Marketplace Service;
- (a) the Software Services;
- (b) only in relation to Premium Providers, the Premium Services; and
- (c) other benefits and services a Provider may receive from Avaana through the Platform from time to time.

**Booking** includes:

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

**Calendar** means the calendar functionality made available to the Provider and each of its Practitioners as part of the Software Services and which includes an ability to manage date and time availability for Appointments in accordance with clause 3.3.

**Cancellation Policy** has the meaning given to that term in clause 3.6(a).

**Channels** includes the Platform and any third party website, search engine, social media platform or other form of media through which the Provider Services are from time to time advertised for Booking.

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

**Checkout Price** means the price paid (or if the Client selects the Pay By Cash Option, payable) by a Client in consideration for the Provider Services the subject of a Booking which for the avoidance of doubt is equal to the Service Price less any Promo Code.

**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.

**Client** means any person who books, purchases or receives Provider Services through use of the Avaana Services.

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

**Client 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 the Provider, Practitioners or Avaana by a Client including pursuant to a Client Review, upon Checkout or as a result of the creation of a Client Account.

**Commencement Date** means the earlier of:

- (a) if the Provider fully completes the Online Signup Form, the date on which the Provider ticks the box to confirm their acceptance of these Terms;
- (d) if the Provider fully completes the Document Signup Form, the date on which the Provider signs the Document Signup form or otherwise confirms their acceptance of these Terms (and regardless of whether such confirmation is verbal or in writing);
- (e) if the Provider partially completes the Online Signup Form or the Document Signup Form, the date on which the Provider confirms their acceptance of the Provider Content included in the Online Signup Form or the Document Signup Form (as applicable) and confirms their acceptance of these Terms (whether before or after the completion of the Online Signup Form or Document Signup Form and regardless of whether such confirmation is verbal or in writing); and
- (f) the Provider begins to receive the Avaana Services.

**Commission Rate** means the percentage or dollar rate specified from time to time on the Pricing Page, as being Avaana's percentage share of the Service Price for the Provider Services the subject of a Booking.

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

**Confidential Information** means the confidential information of a party which relates to the subject matter of these Terms and includes:

- (a) in your case, information relating to you, your business and marketing plans, your customers and your financial information you provide to Avaana and the API Information;
- (g) in our case, information relating to Avaana, our business and marketing plans, our customers, and our financial information and the specifications of the Platform, Software Services and the Avaana Services,

but excluding information which:

- (h) is disclosed to you by a third party entitled to do so, whether before or after the date of these Terms; or
- (i) was already lawfully in the your possession when it was given to you and was not otherwise acquired from Avaana directly or indirectly; or
- (j) is generally available to the public at the date of these Terms or subsequently becomes so available other than by reason of a breach of these Terms or any breach of confidentiality.

**Fees** means the fees, as set out in the Pricing Page, payable by a Provider to receive the Avaana Services and as amended from time to time in accordance with clause 4 of these



Terms and includes the Marketplace Commission, Premium Subscription Fee and the Third Party Fees.

**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 Rights** means:

- (a) patents, designs, trademarks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know-how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

**Integration Tools** means any application, service, program, script, application programming interface, web service parameters or method which has been developed by Avaana, you or a third party for the purposes of integrating your time and date availability (including from a practice management system or an appointment calendar system used by your business) for the purposes of assisting Clients to make Appointments for your Provider Services in real time through the Marketplace Service.

**Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment of any kind (including liability to a third party) including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and advisor costs.

**Marketplace Commission** means the Applicable Rate multiplied by the Service Price of a Booking (and for the avoidance of doubt, not the Checkout Price paid by the Client).

**Marketplace Service** means the online marketplace service that allows Clients to search, find, compare make Bookings with and which otherwise connects Clients with you and includes all services provided to you in connection with the Marketplace Service including the Provider Page, the appearance of the Provider's business and Provider Content on the Platform and in search results, the Calendar and other benefits accessible to the Provider through the Platform.

**Minimum Fee** means \$5 per Booking.

**Our Invoice** means an invoice issued by Avaana to you for Fees associated with the Avaana Services.

**Pay By Cash Option** means the option selected by a Client using the Platform pursuant to which the Client chooses to pay for an Appointment by cash at the time of the Appointment.

**Payment Gateway Fees** means all payment processing services fees or other amounts payable by Avaana or otherwise collected by Stripe in connection with the making of a

Booking for Provider Services.

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

**Platform** means:

- (a) the website accessible from [www.avaana.com.au](http://www.avaana.com.au) and includes the Avaana Services which are accessible from the website; and
- (b) any applicable page or pages and contents of the Provider's own website(s).

**post** or **upload** means to make available Provider Content, information or materials to Avaana (including by email to Avaana's representatives) or Clients in connection with the Platform or the Avaana Services including through the Signup Form, Business Dashboard, Avaana blog or otherwise through the use of the Avaana Services.

**Practitioner** means any person employed by, contracted to or whom otherwise provides Provider Services for or on behalf of a Provider and the Provider's business.

**Practitioner Account** means an account on the Platform created by or on behalf of the Provider (including by Avaana) for a Practitioner, using the Signup Form or the Business Dashboard.

**Premium Provider** means a provider that has paid the Premium Subscription Fee in consideration of receiving the Premium Services.

**Premium Services** means those services which Avaana agrees to provide to Premium Providers in addition to those Avaana Services accessible by all Providers, as set out on the Pricing Page.

**Premium Subscription Fee** means the monthly subscription fee payable in advance, as set out in the Pricing Page, payable by a Premium Provider in consideration for receiving the Premium Services.

**Pricing Page** means [www.avaana.com.au/plans-and-pricing](http://www.avaana.com.au/plans-and-pricing), which sets out the respective Fees payable from time to time for each of the Avaana Services.

**Privacy Act** means the *Privacy Act 1988 (Cth)*.

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

**Provider or you** means:

- (a) an individual, firm or company which accesses the Platform and/or responds to a communication from Avaana for the purposes of registering a Provider Account; and
- (b) an individual, firm or company which has registered a Provider Account for the purposes of receiving the Avaana Services;
- (c) each of the Provider's Practitioners, whether through the use of their respective

Practitioner Accounts or the Provider's Provider Account; and

- (d) each of the employees, contractors and agents who may access and use the Platform or the Avaana Services for or on behalf of the Provider using the Provider Account,

and **your** has a corresponding meaning.

**Provider Account** means in relation to a Provider, an account on the Platform created by the Provider (or by Avaana on behalf of or in collaboration with the Provider), using the Signup Form.

**Provider Content** means all information, documentation, content, images, video, audio, text, compilations or other information provided to Avaana on or before the Commencement Date or subsequently uploaded to the Platform through the Business Dashboard.

**Business Dashboard** means the dashboard accessible to a Provider from the Platform pursuant to which the Provider can create, amend and modify details in connection with its Provider Account and upload Provider Content.

**Provider Fees** means all amounts payable to a Provider by a Client in consideration for the provision by the Provider of a Provider Service to the Client.

**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 the Provider is in the business of providing and supplying and which are marketed and advertised for sale to Clients by the Provider through use of the Avaana Services;

**Service Price** means in relation to a Provider Service, the price of the Provider Service which Clients can purchase the Provider Service for using the Marketplace Service (as discounted by the Provider from time to time).

**Signup Form** means the Document Signup Form or the Online Signup Form or a combination of both (as applicable).

**Site User** means any person who has access to, or uses, the Platform.

**Software Services** means the software specifically designed to be accessible to the Provider through its Provider Account including the Business Dashboard, the Provider Page and the Calendar.

**Standard Payment Terms** means 7 days from the date of the Booking.

**Stripe** means Stripe Payments Australia Pty Ltd A.C.N. 160 180 343.

**Stripe Connected Account Agreement** means the agreement between Stripe and the Provider on the terms specified at <https://stripe.com/au/connect-account/legal>.

**Stripe Terms of Service** means the agreement between Stripe and the Provider on the terms specified at <https://stripe.com/au/legal>.

**Terms** means this agreement which sets out the terms and conditions upon which Avaana will provide the Avaana Services to the Provider and which comes into effect on the Commencement Date.

**User Terms of Use and Booking Conditions** means the terms of use and booking conditions which apply to all users of the Platform who view, have access to, and use the Platform and also apply to the Booking of products and/or services available for Booking through the Platform, available at [www.avaana.com.au/terms-of-use](http://www.avaana.com.au/terms-of-use).

**Third Party Fees** means the following fees that Avaana is required to pay to third parties in connection with the provision of the Avaana Services including:

- (a) the Payment Gateway Fees; and
- (b) the API Fees,

and any reasonable margin applied by Avaana in respect of those fees from time to time.

**Trial Period** means any period pursuant to which Avaana and the Provider agree in writing that no Fees (except for Third Party Fees) will be payable in consideration for the provision of the Avaana Services.

**Visitor** means a person who uses the Platform in accordance with all Applicable Laws who is not a Provider, Practitioner, a Client or a representative of Avaana.

**Voucher** means a booking where a Client books a Provider Service with a specific Provider at a specific price but where, at the time of making the booking, the Client 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.

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## 2. Interpretation

In these Terms, unless the context otherwise requires:

- (a) an obligation on a Provider or a Practitioner in these Terms becomes operative as from the Commencement Date;
- (b) a reference to these Terms includes any hyperlinks (and any terms and conditions included through accessing such hyperlink), 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.