



Online Session Terms and Conditions

Last updated: 4 August 2020

Recitals

- A Shoalhaven Neighbourhood Services Inc (**we, us or our**), may from time to time make the following services available:
- (a) live online yoga, art and other workshops and sessions, including playgroups (**Online Sessions**); and
 - (b) Material in connection with Online Sessions, including recordings of Online Sessions (**Content**).
- B These terms and conditions (**Terms**) set out the terms on which we allow you to access, participate in, and use the Online Sessions and Content (**Services**).

Agreed terms

1 Services

Eligibility

- 1.1 You may only access and use the Services if you are over the age of 16.
- 1.2 You may only access and use an Online Session which is intended for children (such as a playgroup) (**Family Session**) if:
- (a) you attend that Family Session with a child of an age that is appropriate for that Family Session (as notified to you from time to time); and
 - (b) you:
 - (i) are a parent or guardian of that child and consent to your child participating in that Family Session and being included in Content relating to that Family Session; or
 - (ii) are not a parent or guardian of that child but have obtained the consent of a parent or guardian of that child for that child to participate in that Family Session and being included in Content relating to that Family Session.
- 1.3 You are responsible for ensuring any person over the age of 16 who participates in a Family Session with you meets any pre-conditions to attending that Family Session and otherwise agrees to these Terms.

Access Details

- 1.4 If you would like to access and use our Services (and we agree) we will provide you with details on how to access our Services (**Access Details**).
- 1.5 You acknowledge that you may be required to create an online account with us, or a Third Party Service, in order to be able to receive the Services.

Licence

- 1.6 If you would like to access and use our Services (and we agree), provided that you accept and comply with these Terms, we grant you a non-exclusive, revocable, limited right and licence to access and use:
- (a) an Online Session for the duration of that Online Session; and
 - (b) the Content,
- for your own private and personal use.

- 1.7 You acknowledge that any licence terms relating to a Third Party Service will be as set out in the terms which apply as between you and that Third Party Service (such as when you create an account for that service). See clause 5 for further information

2 General Obligations

Your use of the Services

- 2.1 You must:
- (a) access and use the Services and any Third Party Services in accordance with all applicable legislation, including the *Privacy Act 1988* (Cth) and the Australian Privacy Principles and any applicable export control and intellectual property legislation;
 - (b) not access or use the Services other than in accordance with these Terms;
 - (c) ensure that the Access Details we give you are kept secure and confidential, and ensure that those Access Details are not disclosed, provided or made available to, or otherwise accessed by, any third party; and
 - (d) notify us immediately if you become aware that the Access Details we give you have been disclosed, provided or made available to, or otherwise accessed by, any third party.
- 2.2 If you make any Material available to us through or in connection with the Services (**Your IP**):
- (a) you acknowledge and agree that the Material may be available to us and to other users who have access to the Services; and
 - (b) you grant us a non-exclusive, irrevocable, sub-licensable licence to store, reproduce, use, modify and disclose Your IP in connection with the Services.

Safety

- 2.3 You acknowledge that you are responsible for:
- (a) ensuring that the space that you (and, for any Family Session, any children you attend that session with) use to view, and participate in, the Services is a space which is both safe and suitable for that purpose; and
 - (b) appropriately supervising any child in your care or other person in your presence while participating in a Family Session.
- See clause 6.4 for further information.

3 Restrictions

- 3.1 You must not:
- (a) not participate, and ensure no other person participates with you, in a Family Session if you or they are on any child protection register;
 - (b) record, film, take screenshots or otherwise capture recordings or images of Family Sessions;
 - (c) resupply, resell, sublicense, make available or otherwise allow any other person to access or use the Services;
 - (d) modify, decompile, disassemble, reverse engineer or otherwise attempt to gain unauthorised access to all or any portion of the Online Sessions or any Third Party Services, including any source code, object code, algorithms, methods or techniques used or embodied therein;

- (e) use the Online Sessions or any Third Party Services:
 - (i) to engage in any fraudulent, unlawful, false or misleading activity, or to defame, menace or harass any third party;
 - (ii) to build or benchmark a competitive product or service, or copy any features, functions or graphics of a Third Party Service;
 - (iii) to gain unauthorised access to or interfere with any online resources or systems of any third party, including by any form of hacking;
 - (iv) in any manner that is likely to result in our systems, or that of any other person, being affected by any virus, worm, Trojan or similar computer program;
 - (v) in a way that infringes the intellectual property rights or any other rights of any person;
 - (vi) in a way that abuses, interferes with, disrupts, damages, disables, overburdens, impairs or otherwise interferes with our services, networks, or other resources, or those of our other customers or third party service providers;
 - (vii) for the purposes of accessing, storing, distributing, providing (including to us) or otherwise transmitting any Material that:
 - (A) is intended to harm, disable, destroy or adversely affect Third Party Services or in a manner that does, or is intended to, harm or extract information or data from other hardware, software or networks of our Third Party Service providers or of other uses of those Third Party Services;
 - (B) infringes the Intellectual Property Rights of any third party;
 - (C) is unlawful, misleading, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (D) promotes unlawful violence or depicts sexually explicit images; or
 - (E) that would otherwise give rise to civil liability or that constitutes or encourages conduct that could constitute a criminal offence under applicable law.

3.2 We reserve the right (but are not obliged) to remove from the Services any of your Material that we consider to be inappropriate or otherwise in breach of clause 3.1.

4 Acknowledgements

4.1 You acknowledge and agree that:

- (a) to the extent permitted by applicable law and subject to clause 6.4:
 - (i) we make no warranty that the Services will be free from defects, errors or faults, or that they are fit for any particular purpose; and
 - (ii) the Services may not be available from time to time, and we make no representation or warranty in relation to the availability of the Services;
- (b) you are responsible for any Material that you provide or make available through or in connection with the Services.

5 Third party services

Use of third party services

5.1 We may use third party products and services (including Zoom meeting and conferencing services) to deliver the Services to you (**Third Party Services**). If our third party service providers terminate a Third Party Service we rely on to provide the Services to you, we may choose a replacement Third Party Service provider or suspend or terminate our provision of those Services, or the affected part of those Services, as relevant.

Third party terms

- 5.2 Your use of any third party product, content or service as part of or in connection with the Services may be subject to separate terms and conditions, whether imposed by us or by the relevant third party.
- 5.3 You must comply with such third party terms and conditions that we notify you of from time to time. For example, you must comply with Zoom's terms of service and policies, available at <https://zoom.us/terms> and www.zoom.us/legal (as amended from time to time), to the extent that they apply to you. In particular, you acknowledge and agree that:
 - (a) by using Zoom's meeting and conferencing services (**Zoom Services**) you consent to Zoom storing any recordings of meetings or webinars that you join (if those records are stored in Zoom's systems);
 - (b) you will be notified when a Zoom meeting or webinar is being recorded and if you do not consent to being recorded you may leave that meeting or webinar;
 - (c) you indemnify, defend and hold harmless Zoom, its affiliates, officers, directors, employees, consultants, agents, suppliers and resellers from any and all third party claims, liability, damages and/or cost (including but not limited to legal fees) arising from your use of the Zoom Services, your breach of Zoom's terms of service or your infringements or violation of any third party rights (including intellectual property rights) or applicable law; and
 - (d) the Zoom Services are subject to Zoom's Privacy Policy, available at www.zoom.us/legal, and Zoom's Global Data Processing Addendum, available at https://zoom.us/docs/doc/Zoom_GLOBAL_DPA.pdf.

6 Limitation of liability

Limitation

- 6.1 Subject to clauses 6.2 and 6.5, our aggregate liability for any loss or damage, you suffer or incur in connection with the Services is limited to:
 - (a) in the case of a supply of goods, us replacing or repairing those goods or supplying equivalent goods, or paying the cost of replacing or repairing the goods or supplying equivalent goods; and
 - (b) in the case of services, us supplying the services again or paying the cost of having the services supplied again.

Consequential Loss

- 6.2 Subject to clause 6.4:
 - (a) we not liable for any Consequential Loss however caused (including by our negligence), that you suffer or incur in connection with the Services or these terms; and
 - (b) you are not liable for any Consequential Losses we suffer in connection with the Services or these terms.
- 6.3 Consequential Loss in clause 6.2 means any loss or damage that does not arise naturally, that is according to the usual course of things, and includes:
 - (a) loss of revenue;
 - (b) loss of reputation;

- (c) loss of profits;
- (d) consequential loss;
- (e) loss of actual or anticipated savings;
- (f) loss of bargain;
- (g) loss of data;
- (h) indirect loss;
- (i) lost opportunities (including opportunities to enter into arrangements with third parties).

Liability for personal injury, death and property damage

- 6.4 Subject to clause 6.5, we are not liable for any personal injury or death or any damage to property in connection with your access to or use of the Services.

Liability for consumer guarantees

- 6.5 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by us in connection with these Terms and our liability for failing to comply with that guarantee cannot be excluded then clauses 6.1, 6.2 and 6.4 do not apply to that liability.

7 Indemnity

- 7.1 You are liable for, and indemnify us from and against, all loss or damage (including legal costs) that we suffer or incur in connection with:
- (a) your breach of clauses 0, 3.1 or 5.3;
 - (b) any claim by a third party that the Materials that you provide or make available through or in connection with the Services infringes the rights (including intellectual property rights) of that third party.

8 Intellectual property rights

- 8.1 We, or our licensors, as applicable, own all intellectual property rights in the Services and any modifications or enhancements to those intellectual property rights (**Background IP**). If you modify or enhance our Background IP, you assign to the owner of such Background IP all intellectual property rights in those modifications or enhancements from creation.
- 8.2 Other than as set out in clause 1.6, nothing in these Terms grants you any rights (including intellectual property rights) in the Services or the Background IP.

9 Privacy and Confidentiality

- 9.1 We collect, hold, use and disclose your Personal Information:
- (a) for the purposes of providing the Services to you and for purposes associated with our activities (including providing you with information about goods or services that you may be interested in); and
 - (b) in accordance with our [External Privacy Policy](#) and applicable legislation.
- 9.2 If you receive or access the Confidential Information of another participant in an Online Session, you must:
- (a) keep that Confidential Information secret and confidential; and
 - (b) not disclose that Confidential Information to any person except:
 - (i) with the disclosing participant's consent; or
 - (ii) if required by law or any regulatory authority; or

- (iii) if it is in the public domain.

10 Changes to these Terms

- 10.1 We may change the terms and conditions of these Terms at any time. We will notify you of any material changes to these Terms. We will use reasonable endeavours to provide you with reasonable notice before making any such changes.
- 10.2 In the event that we make any changes to these Terms, you are not required to accept them. However, if you do not agree with them, you must not continue to use the Services.

11 Term and termination

- 11.1 These Terms commence on the date that you first access or use the Services and end on the date on which we cease to offer the Services (unless these Terms are terminated earlier under this clause).
- 11.2 Either party may terminate these Terms at any time immediately on written notice to the other party.
- 11.3 We may suspend or terminate these Terms and the licence granted to you under clause 1.6, or your access to the Services, if you breach these Terms.
- 11.4 On termination or expiry of these Terms:
- (a) the licence granted to you under clause 1.6 is automatically terminated and you must immediately cease accessing and using the Services; and
 - (b) accrued rights or remedies of the parties are not affected.

12 Merger and survival

- 12.1 The rights and obligations of the parties under these Terms do not merge on completion of any transaction contemplated by them.
- 12.2 Termination or expiry of these Terms will not affect clauses 6, 7 and 8 and any other clause of these Terms which is expressly or by implication intended to come into force or continue after termination or expiry.

13 General

- 13.1 The laws of New South Wales, Australia govern these Terms.
- 13.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and courts competent to hear appeals from those courts.
- 13.3 You must not assign, in whole or in part, or novate your rights and obligations under these Terms without our prior written consent.
- 13.4 We may use subcontractors to provide the Services to you.
- 13.5 A clause or part of a clause of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining clauses or parts of the clause of these Terms continue in force.
- 13.6 These Terms embody the entire agreement between you and us in respect of the Services.

14 Definitions and interpretation

Definitions

- 14.1 In these Terms:
- Access Details** has the meaning given to it in clause 1.4.
- Content** has the meaning given to in in Recital A(b).
- Confidential Information** of a participant in an Online Session means:
- (a) that participant's Personal Information;

- (b) information of a confidential nature provided or made available by that participant; or
- (c) information designated by that participant as confidential.

Family Session has the meaning given to it in clause 1.2.

Online Sessions has the meaning given to it in Recital A(a).

Material means any information, material or content including software, tools, documentation, reports, data, diagrams, procedures, plans and other materials and plans.

Personal Information means any information or an opinion (whether recorded in a material form or not) about an individual whose identity is apparent or can reasonably be ascertained from that information or opinion.

Services has the meaning given to it in Recital B.

Terms has the meaning given to it in Recital B.

Third Party Services has the meaning given to it in clause 5.1.

Interpretation

14.2 In these Terms:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) no rule of construction applies in the interpretation of these Terms to the disadvantage of the party preparing these Terms on the basis that it put forward these Terms or any part of them; and
- (c) a reference to a party is a reference to you or us, and a reference to the parties is a reference to both you and us.