

Client Engagement Terms

Sera Boyd's Sports Nutrition (SBSN)

1. Engagement

- (a) These Client Engagement Terms (**Terms**) set out our agreement with you regarding our provision of Services, being sports nutrition advice and services, which may include personalised nutrition advice, exercise and training plans and access to digital products and programs.
- (b) You accept and agree to be bound by these Terms where you:
- (i) sign any Proposal that is provided in conjunction with these Terms;
 - (ii) click "agree" or "accept" if our Terms have been provided to you electronically;
 - (iii) verbally communicate your acceptance to us; or
 - (iv) attend any appointment or consultation following your receipt of these Terms.
- (c) You will be bound by these Terms from the date of acceptance, and our agreement with you will continue until we have each discharged all of our obligations under these Terms, or our agreement is otherwise terminated in accordance with clause 8.
- (d) If we have provided you with a Proposal (in whatever form), these Terms will prevail to the extent of any inconsistency with that document.
- (i) a single payment either prior to or following our delivery of the Services; or
- (ii) fixed term payments (for example on a weekly or monthly basis).
- (d) You agree that you will pay our Fees at the time and on the dates specified in our Proposal or otherwise advised to you by us, prior to or at the time of our delivery of the Services.
- (e) We will provide you with a valid tax invoice relating to all Fees payable.
- (f) You agree that if you fail to pay our Fees as and when they fall due and owing:
- (i) we will (at our discretion) charge interest on all outstanding amounts at the rate of 10% per annum accruing daily until all amounts have been paid; and
 - (ii) you will be liable to pay all costs that we incur in association with recovering any overdue payments, including without limitation debt collection or legal fees, on a full indemnity basis.
- (g) You acknowledge and agree that if you have failed to pay any Fees to us when they fall due and owing we may (at our discretion) suspend or terminate our provision of Services. You hereby release and hold us harmless in respect of any loss or damage that you may suffer or incur as a consequence of our exercise of any right of suspension or termination.

2. Sports Nutrition Services and Fees

- (a) Our Proposal to you will set out the nature and extent of the Services that we provide to you as part of our engagement. These Services may include:
- (i) a once off consultation;
 - (ii) ongoing consultations;
 - (iii) development of sports nutrition programs; or
 - (iv) access to online and digital sports nutrition educational and instructional content.
- (b) We will advise you of the Fees that are payable in association with our Services in our Proposal.
- (c) The nature of the Fees payable will vary depending on the nature of our engagement with you and may include:

3. Health disclosure

- (a) You acknowledge and agree that prior to our delivery of any Services you have provided us with full and complete information regarding your health and any Health Conditions that may affect your health and the advice that we provide to you.
- (b) You must immediately inform us in writing:
- (i) of any change to your health circumstances or Health Conditions which may affect your receipt of our Services; or
 - (ii) if you believe or reasonably should be of the belief, that receiving our Services could pose a risk to your health or negatively affect any Health Condition.
- (c) You acknowledge and agree that:

- (i) our Services are provided based on the accuracy and completeness of the health information provided by you, particularly in regard to any Health Condition; and
 - (ii) your failure to provide accurate or complete health information, particularly regarding your Health Conditions, may adversely affect the quality and suitability of our Services.
- (d) You acknowledge and agree that:
- (i) disclosure of your Health Conditions is required to enable us and our staff to take practical steps to avoid aggravating your Health Conditions or otherwise adversely affecting your general wellbeing; and
 - (ii) unless you expressly tell us otherwise, we and our staff will assume you have no Health Conditions and will provide our Services to you on that basis.
- (e) If you have received medical or health advice from any other medical or health professional that impacts, or is likely to impact upon, the Services that we will deliver, you warrant that you have provided all such information to us.

4. Sports Nutrition Training and Education Materials

- (a) As part of our Services we may provide you with access to or copies of:
- (i) physical documents and materials; or
 - (ii) digital content and courses,
- that include sports nutrition information, general educational content, training programs, meal plans, training programs, exercise guides or other similar training and educational material (**Sports Nutrition Content**).
- (b) You acknowledge that Intellectual Property Rights subsist in all Sports Nutrition Content that you are provided with as part of our delivery of the Services.
- (c) The Intellectual Property Rights in all Sports Nutrition Content are either owned by us, or provided to you by us under licence from the owner of those Intellectual Property Rights.
- (d) You explicitly acknowledge and agree that you must not without our express written licence and authority;
- (i) reproduce any of the Sports Nutrition Content;
 - (ii) provide access to any digital Sports Nutrition Content to any other person;
 - (iii) make compilations or derivatives of any Sports Nutrition Content; or

- (iv) use any Sports Nutrition Content for any commercial, non-personal purposes.
- (e) Nothing in clause 4 is intended to prevent you from providing general information and materials to other health care professionals that are providing you with health care advice or assistance.
- (f) Nothing in these Terms has the effect of transferring or assigning to you the Intellectual Property Rights subsisting in any Sports Nutrition Content.
- (g) We reserve the right to revoke your licence to use the Sports Nutrition Content, as provided by this clause 4, at any time.

5. Service Level

- (a) All of the Services that we deliver to you will be delivered professionally, in good faith and with the due care and skill that you would expect to be provided by a sports nutrition professional.
- (b) You acknowledge that health is specific to each individual, and that the same advice provided to one individual (whether relating to sports nutrition, training, diet, exercise or otherwise) may have different results when provided to another individual.
- (c) We make no guarantee, representation or warranty that by following any advice, information, instruction or direction that we provide that you will achieve any specified or particular outcome, or that by doing so any Health Condition from which you suffer will be remedied or alleviated.
- (d) You acknowledge and agree that we have not made, and you have not relied upon, any guarantee, representation or warranty of the nature referred to in clause 5(c) in relation to our delivery of the Services.
- (e) We hereby exclude all warranties that are not explicitly provided in these Terms, other than those warranties that we are required to provide under the New Zealand Consumer Law or any other relevant law.

6. Your Acknowledgements

- (a) Our advice is not intended as a substitute for the advice of a doctor or healthcare professional and you should always use our Services in conjunction with advice being received from your doctor or other healthcare providers.
- (b) We strongly recommend you speak with your doctor or healthcare provider before adopting or implementing any physical training program, nutritional or dietary program that we provide as part of our Services.
- (c) To the extent that our Services include any physical exercises or fitness regimes, you acknowledge that you will undertake such activities in a safe and

appropriate manner, with consideration of any other advice obtained from a healthcare professional.

- (d) Whilst all reasonable steps are taken to ensure its accuracy and currency, you acknowledge and agree that we make no representation, warranty or guarantee that Sports Nutrition Content (or any part of it) is accurate, reliable, correct, current or suitable for your purposes. This limitation applies in respect of Sports Nutrition Content, however does not extend to advice provided in consultation.
- (e) We do not accept, and you hereby release and hold us harmless in respect of, all Loss that you suffer or incur as a result of your reliance, or the reliance of any other person, upon the information contained in the Sports Nutrition Content.

7. Privacy

We acknowledge and agree that, in respect of all personal and health information you provide to us, we will:

- (a) comply with the *Privacy Act 1988* (Cth) and any other applicable privacy laws; and
- (b) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause you to breach any New Zealand privacy law.

8. Liability and Indemnity

8.1 Liability

- (a) Nothing in these Terms is intended to exclude any right or guarantee to which you are entitled under the New Zealand Consumer Law.
- (b) To the extent permitted by law, you hereby release and hold us harmless from any and all Loss and liability whether relating directly or indirectly, to any personal injury caused, resulting from or arising out of your receipt of our Services.
- (c) To the extent permitted by law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, equity, tort (including negligence) or otherwise in connection with these Terms, even where the other party were appraised of the likelihood of such Loss occurring.
- (d) A party will not be liable to the other in connection with Loss suffered, to the extent that the other party contributed to the Loss.
- (e) A party who suffers Loss must use reasonable steps to mitigate its Loss. The other party will not be responsible for any Loss to the extent that the injured party could have avoided or reduced the amount of the Loss by taking reasonable steps to mitigate its Loss.
- (f) To the extent permitted by law, you indemnify us on a continuing basis in respect of any liability for Loss that we suffer or incur as a result of:

- (i) your breach of these Terms;
- (ii) and claim relating to the infringement of the Intellectual Property Rights of any third party as a consequence of your use of the Sports Nutrition Content in a manner other than as provided for in these Terms.

9. Termination

- (a) Where our Services relate to the provision of a one off, or ad-hoc consultation, you may terminate our agreement pursuant to these Terms without penalty at any time prior to 24 hours before your consultation date. If you terminate within 24 hours of your consultation date, we reserve the right to charge you an administrative fee that is proportional to the time and expense that we have incurred as a consequence of your termination.
- (b) If our Services are being provided to you on an ongoing basis for a fixed term, you may terminate your agreement with us pursuant to these Terms upon the provision of 30 days' notice in writing and provided that all Fees due and owing have been paid to us.
- (c) We reserve the right to terminate our agreement with you pursuant to these Terms immediately at any time where you have, or we reasonably suspect you will:
 - (i) engage in conduct which is illegal, unethical or immoral; or
 - (ii) in our reasonable opinion is likely to expose us to a risk of Loss or damage.
- (d) We may otherwise terminate our agreement with you pursuant to these Terms upon the provision of 7 days' notice.
- (e) Either party may terminate the agreement pursuant to these Terms where:
 - (i) the other party is in breach of a provision of these Terms; and
 - (ii) following receipt of written notice of the breach from the other party, fails to remedy the breach within 14 days.
- (f) Upon termination of our agreement pursuant to these Terms, you acknowledge:
 - (i) all rights and obligations accrued up to the date of the termination including your obligation to pay us any Fees due and owing are not affected; and
 - (ii) your licence to use the Sports Nutrition Content will immediately terminate and you must immediately cease all use of such content and materials.
- (g) This clause and any other clause which by its nature is intended to survive termination, will survive termination of this Agreement.

10. Dispute Resolution

- (a) If a dispute arises out of or relates to our agreement pursuant to these Terms (**Dispute**), neither of us may commence any court or arbitration proceedings relating to the Dispute unless we have complied with this clause, except where we are seeking urgent interlocutory relief.
- (b) The party claiming that a Dispute has arisen must give a Notice (**Dispute Notice**) to the other party or parties specifying the nature of the Dispute. We must then negotiate in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques.
- (c) Each party must bear its own costs in connection with resolving the Dispute and we must bear equally the costs of any mediator engaged.
- (d) Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the dispute.

11. Definitions and Interpretation

11.1 Interpretation

In interpreting this document:

- (a) headings are for convenience only and will not affect interpretation of this Agreement;
- (b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- (c) a reference to legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and
- (e) terms used that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or the *Corporations Act 2001* have the meaning given in that Act, unless the context otherwise requires.

11.2 Definitions

2 **New Zealand Consumer Law** means the New Zealand Consumer law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

3 **Consequential Loss** means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of contract, loss of data, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage.

4 **Health Condition** means any physical or mental restriction, injury, allergy, pregnancy, disability or

predisposition to sickness or injury that relates to your health.

5 **Intellectual Property Rights** means all intellectual property rights, including (without limitation) the following rights:

- (a) copyright, patents, trade marks, designs, trade secrets, know how, and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights or a similar nature to any of the rights in paragraphs (a) and (b) which may subsist,

6 whether or not such rights are registered or capable of being registered

7 **Loss** means any damage, loss, cost, charge, expense or liability, however arising (including contractual, tortious, legal, equitable loss or loss pursuant to statute).

8 **Proposal** means any letter of engagement, description of services or program outline that we provide to you that details the sports nutrition advice, exercise and training plans or digital content and materials that we will provide access to.

9 **Services** has the meaning given by clause 2(a).

10 **Sports Nutrition Content** has the meaning given to that term in clause 4(a).