



## TERMS AND CONDITIONS

### FOR COMLETING SURVEYS, PURCHASING SERVICES

### AND JUST BROWSING

Welcome to Sport Wellbeing.

In these terms, we also refer to Sport Wellbeing as “our”, “we, or “us”.

And you are you. We also refer to you as a user.

#### What are these terms about?

To make it easier for you to understand the terms on which we provide our services, we've tried to keep these terms and conditions as simple as possible by using plain English.

These terms apply when you use this website. When we talk about the “**Website**” in these terms, we are referring to our Website, being <https://www.sportwellbeing.com.au/> and any other websites we operate with the same domain name and a different extension. When we talk about a “**Third Party Website**”, we are referring to us using third party services, to provide and distribute our surveys and other services through their third party website. To the extent applicable in these terms of us operating our surveys, when we talk about our Website in these terms, it may also be referring to our Third Party Website.

These terms also apply when you purchase our “**Services**”, including completing any of our surveys. When we talk about our Services in these terms we are referring to any of our services available on the Website, including if you manage, complete and/or purchase any of our surveys, through this Website. Some of these terms will apply when you purchase our Services through any Third Party Website and are managing or completing our surveys through this Website.

We've also used a few other capitalised words and phrases as shorthand to refer to recurring concepts. Each of these are defined in bold and in brackets after the concepts are first mentioned.

If you're looking for our Privacy Policy, which we will comply with and you also agree to be bound by, you can find it here <http://sportwellbeing.com.au/privacy>.

---

#### How do I read these terms?

We separated these terms into four parts, so they are easy to read and understand.

Those parts are:

- **PART A:** Disclaimers (applies to managing and completing surveys, buying and browsing)
- **PART B:** Terms for when you manage or complete surveys and/or buy Services (applies when you manage, complete and buy surveys)
- **PART C:** Terms for when you browse and interact with this Website (applies when you browse)
- **PART D:** Liability and warranties, and interpretation provisions (applies to managing, completing and buying surveys and browsing)

Please let us know if you have any questions about these terms or our Services, and don't continue using this Website, complete any surveys, or purchase any Services unless you have read and agree to these terms. If you have any questions or concerns you can contact us at:

[info@eliteperformance.com.au](mailto:info@eliteperformance.com.au); or

Sport Wellbeing

PO Box 243

Camberwell VIC 3124

---

**I've returned to your Website, do I need read these terms again?**

Once you complete a survey, manage a survey, or place an Order (defined below), the terms of Part B accepted at the point of sale or managing or completing the survey will apply to your use or purchase of those Services. However, please note that we may change any part of these terms at any time by updating this page of this Website, so you may find that different terms apply next time you use this Website, complete our manage our surveys or purchase Services. You can check the date at the top of this page to see when we last updated these terms.

---

## PART A

### DISCLAIMER

#### DISCLAIMER

Sport Wellbeing provides surveys for sporting organisations and teams (**Organisation**) to provide general wellbeing information.

**Our Services, including our surveys, are NOT a diagnostic tool. They are informational only.**

Our surveys and Services are summaries of individually self-reported data based on the past four weeks and should not be used as a definitive assessment or screening of an individual's overall wellbeing or performance in any specific individual sub-category. Any information contained in a survey is intended for an Organisation to use only as a guide to individual and group wellbeing. The information in any survey reports are intended for a specific allocated person within the sport or Organisation identified as the survey administrator (**Administrator**). The Administrator should be familiar with wellbeing concepts. It is also the responsibility of the Organisation/Administrator to obtain and manage any consent from persons completing the survey including parents and/or legal guardians for athletes/persons under 18 years of age to complete the survey and to inform parents/participants completing the survey about the survey. When interpreting survey information there are no right or wrong responses. Information should be considered in the context of a person's, or groups', overall experience at the Organisation and supported by further investigation, targeted assessments or specific professional advice. Sport Wellbeing and any of its personnel (including employees and contractors) are not responsible for the administration, use of and interpretation of survey data.

By accepting these terms and conditions as an Administrator, or an individual participating in our surveys and Services, or otherwise engaging with us, you acknowledge and agree that:

- (a) **(Not medical advice or diagnosis)** The information on this Website and our Services is not intended to be a substitute for professional advice, diagnosis, or treatment. Any information in the Website and Services is not medical or mental health advice and you cannot rely on this information as a substitute for medical or mental health advice. Any information provided to you in the Website and the Services is not intended to diagnose, treat, cure or prevent any disease, including any mental health condition. We accept no responsibility from any adverse effects from using the information provided to you in the Services and the Website. If you think you may have a medical or mental health issue please seek medical advice from a trained medical or mental health professional.
- (b) **(Guidelines only)** Any recommendations or advice provided on the Website or in our documents and reports and any of our other Services are guidelines only of what actions you, or your Organisation, may take and are in no way to be taken as medical or mental health advice and are not exhaustive of all possible solutions or remedies. We may provide options or guidelines for how you choose to use or operate the survey. These are guidelines only and it is up to you, or your Organisation, as to how you conduct the survey and what you do with any of the information from any reports generated by the survey.
- (c) **(Report information not guaranteed)** We cannot guarantee any of the information in the reports generated from our surveys or from your use of the Services, including taking any survey. Sport Wellbeing does not guarantee the accuracy, quality, suitability or reliability of the information or the feedback from any of its surveys or Services. All surveys are self-report information and rely on the information provided by individuals.
- (d) **(Voluntary)** Our surveys are voluntary. You may choose not to participate in them. Surveys may also be de-identified or anonymous.
- (e) **(Seek professional help)** You should always seek the advice of an appropriate person or qualified health provider with any questions you have regarding any survey or if you have questions or concerns about the information in surveys or reports.

If you are unsure about participating in our surveys, or anything in our Services, we encourage you to contact us, contact your survey provider, or you may choose to not participate in any of our surveys.

## PART B

### FOR WHEN YOU BUY OR USE SERVICES, INCLUDING MANAGING OR PARTICIPATING IN OUR SURVEYS...

#### 1. WELLBEING SURVEYS

Sport Wellbeing provides wellbeing surveys for Organisations to monitor the wellbeing of an sport and individuals (athletes).

We may utilise third party partners, including Third Party Websites, to distribute and manage our surveys and Services for you.

##### 1.1 ELIGIBILITY

- (a) This Website and the Services are not intended for unsupervised use by any person under the age of 18 years old (**Minor**) or any person who has previously been suspended or prohibited from using the Website. By using the Website, you represent and warrant that you are either:
  - (i) over the age of 18 years and accessing the Website voluntarily; or
  - (ii) for persons under 18 years of age you must have the consent of a parent or legal guardian to complete the survey or the consent from your Sport as per your Sport policy.
- (b) If you are using the Website and the Services and are under the age of 18 you must have the consent of your parent and/or legal guardian and/or Sport in order to access the Services and the Website.
- (c) Please do not access the Website or use the Services if you are under the age of 18 years old and do not have your parent or legal guardian's consent or Sport consent, or if you have previously been suspended or prohibited from using the Website.
- (d) If you are a parent or legal guardian of a Minor, or a Sport providing consent, and permitting a Minor to use the Website and the Services, you agree to assume all risks associated with, and liabilities resulting from, the Minor's use of the Services and the Website.

##### 1.2 ORGANISATION AND ADMINISTRATOR ASSUMPTION OF RESPONSIBILITY

This clause applies to Organisations and Administrators. As an Organisation and/or an Administrator you acknowledge and agree to the following:

- (a) If you are agreeing to this agreement not as an individual but on behalf of your Organisation (including as a coach, employee or otherwise on behalf of a company, employer, organisation or other legal entity (**Represented Organisation**)), then "you" or "user" means the Represented Organisation and you are binding the Represented Organisation (including a Sport), as applicable to these terms. If you are accepting these terms and using our Services on behalf of a Represented Organisation, you represent and warrant that you are authorised to do so.
- (b) The Organisation/Administrator must read any guidelines or information provided by Sport Wellbeing.
- (c) The Organisation/Administrator must ensure that it has, or provides the consent for all individuals participating in the surveys, including obtaining consent from parents / legal guardians if applicable, to sign up to these terms on their behalf, or on behalf of any Minors, and to provide any personal and sensitive information to Sport Wellbeing.
- (d) The Organisation/Administrator is responsible for obtaining all necessary consents, including parental and/or legal guardian consent if applicable for all Minors or individuals to participate in the Services.
- (e) The Organisation/Administrator is responsible for appropriately informing any individuals including athletes and staff that their Organisation is conducting the Services, including any surveys.
- (f) If an Organisation/Administrator deems it appropriate, you must ensure that all individuals participating in the Services sign up to the Services and have read and agree to these

terms, or terms similar to this agreement or are fully and appropriately informed, and/or have provided their consent to complete the survey based on the information provided.

- (g) The Administrator and the Represented Organisation indemnify Sport Wellbeing (and any employees and contractors) for any claims or liabilities arising from any individual or organisation in regards to compliance with this agreement, provision of information, unauthorised disclosure of personal information, lack of parental or legal guardian consent for a Minor and any liability arising from the Services.

### 1.3 SERVICES

Our Services will be as set out on our Website, a Third Party Website, or otherwise provided to you. If you decide to use our Services you must first complete payment and go through our registration process.

### 1.4 PRICES AND PACKAGES

Details and prices for any of our Services will be set out on the Website, the Third Party Website, or otherwise provided to you in writing.

### 1.5 REGISTRATION AND ACCOUNTS

We may require you, or your Organisation, to register for our Services by creating an account to access and use our Services (**Account**). This may be completed by the Administrator.

- (a) Registration should be conducted or coordinated by a person over 18 years of age.
- (b) You will create an Account on our Website and you may choose your own password.
- (c) Minors must have a parent, guardian, or other adult authorised by a parent or guardian (such as the Administrator) create usernames and passwords for them to gain access to the surveys.
- (d) When you verify your Account, you must provide true, accurate and complete information as requested and keep this information up to date after registration.
- (e) You agree that you're solely responsible for:
  - (i) maintaining the confidentiality and security of your Account information and your password; and
  - (ii) any activities and those of any third party that occur through your Account, whether those activities have been authorised by you or not.
- (f) You also agree to let us know if you detect any unusual activity on your Account as soon as you become aware of it.
- (g) We won't be responsible to you for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out of a failure by you to maintain the security of your Account information or your password.
- (h) Your Account will allow you access to the Services on our Website through an online portal.

### 1.6 SURVEY PARTICIPATION

- (a) **(Voluntary)**

If you are a participant in a survey, our surveys are totally voluntary for you to participate in, and you do not have to participate in a survey.
- (b) **(Anonymity)**

For surveys administered by Sports, the Administrator may choose to make the survey anonymous and can manage this internally. It is up to the Sport, and the Administrator's discretion, as to whether names are included in the survey.

### 1.7 YOUR OBLIGATIONS

- (a) You must provide us with all documentation, information and assistance reasonably required by us to perform the Services.

- (b) You agree to participate to the best of your ability in any survey that you complete. You will not intentionally falsify or mislead data. This includes, but not limited to, providing information that is inconsistent with prior responses, or statistically improbable. It is in your best interest to be as honest as possible, as this will enable you to get the most effective and reliable information back from each survey.

## 1.8 SUPPORT

Depending on the Services you purchase, we will provide support to you as set out on our Website, the Third Party Website, or otherwise provided to you.

## 1.9 ACCEPTABLE USE

We need you to make a few commitments about the way you'll use the Services.

You agree:

- (a) not to copy, reproduce, translate, adapt, vary or modify the Services without our express consent;
- (b) not to use the Services in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
- (c) not to use the Services for the purpose of distributing unsolicited commercial content, junk mail, spam, bulk content or harassment;
- (d) not to attempt to breach the security of the Services or Sport Wellbeing's system security, or otherwise interfere with the normal function of the Services, including by:
  - (i) gaining unauthorised access to Sport Wellbeing Services or data about other users of the Services;
  - (ii) scanning, probing or testing the Services for security vulnerabilities;
  - (iii) overload, flood, mailbomb, crash or submit a virus to the Services or Sport Wellbeing's system; or
  - (iv) instigate or participate in a denial-of-service attack against the Services or Sport Wellbeing's system; and

to ensure that your employees, sub-contractors and other agents who you have authorised to use or access the Services (including athletes) comply with this agreement.

## 2. OPERATION OF SERVICES AND CONSENTS

- (a) Sport Wellbeing merely provides the survey and the Services. It is at that discretion of the Organisation as to how they conduct, operate and carry out the Services and the survey. It is the responsibility of the Organisation and the Administrator to manage and monitor the completion and use of any surveys conducted by the Organisation, and the way the information from reports are used, disclosed and held.
- (b) Sport Wellbeing is not responsible for obtaining any consents relating to carrying out the Services, including surveys. It is the responsibility of the Organisation (such as the Sport) and/or the Administrator to appropriately obtain any consent required, including parental/legal guardian consents for Minors. We cannot be held responsible for not obtaining any consents.
- (c) For Sports conducting the survey, Sports are responsible for informing participants and parents/legal guardians to the extent they deem appropriate and in accordance with any Sport policy, about the operation, management, use and disclosure of any information, of any surveys.
- (d) If they deem applicable, Sports must appropriately supervise any Minors completing the surveys. Supervision is the responsibility of the Sport, and parent / legal guardian (if applicable). Sports must ensure that the Services and the surveys are suitable for Minors to participate in.
- (e) You agree to fully indemnify, keep indemnified and hold harmless Sport Wellbeing and its personnel including any employees or contractors, to the extent permitted by law in respect of any claim as a result of or in connection with Sport Wellbeing Services,

including the operation of any surveys and obtaining or not obtaining any consents, including for Minors.

### **3. COLLECTION NOTICE AND PRIVACY**

- (a) We collect personal information about you in order to provide you with our Services, to contact and communicate with you, to respond to your enquiries, when we conduct our wellbeing surveys and for other purposes set out in our Privacy Policy.
- (b) We may collect sensitive health information about you during the course of providing you Services, including the survey. We only collect the information that you choose to provide in order for you to undertake the survey and for us to provide you with our Services
- (c) We generally only have access to de-identified data that relates to sensitive information and have put in place a number of security measures that relate to accessing any sensitive information on our databases. We may use de-identified data from our surveys for articles and research.
- (d) If you are providing personal information of a Minor, including allowing a Minor to participate in our surveys, you must be that Minor's parent or legal guardian (or a Sport providing consent) and you must provide consent for that Minor's personal information to be collected.
- (e) Our Privacy Policy contains more information about how we use, disclose and store your information and details how you can access and correct your personal information.
- (f) By using our Services, you agree to be bound by the clauses outlined in Sport Wellbeing's Privacy Policy available on our Website.

### **4. THIRD PARTY WEBSITE**

- (a) Any Third Party Website we use is subject to additional terms and conditions. By using the Third Party Website you will be bound by this clause and the Third Party Terms in clause 9.
- (b) The Third Party Website is powered by a third party platform and the terms and conditions of that third party may apply to your use of the Third Party Website to the extent applicable to you.
- (c) To the maximum extent permitted under applicable law, we will not be liable for any acts or omissions of that third party, including in relation to any fault or error of the Third Party Website or any issues experienced in using the Third Party Website including downtime and the Third Party Website not functioning adequately.

### **5. OFFER TO ENGAGE IN SERVICES AND/OR PURCHASE SERVICES**

If you are engaging with our Services, or purchasing Services on our Website, by submitting an order for purchase of Services using the Website's functionality, engaging with us as an Administrator, or completing a survey (**Order**) you represent and confirm that you:

- (a) have the legal capacity and are of sufficient age to enter into a binding contract with us; and
- (b) if applicable, are authorised to use the debit or credit card included in your order.

Submitting an Order constitutes your intention and offer to enter into a contract, where we will provide you with the Services you have ordered in exchange for your payment of the total amount listed upon checkout, provided to us, or to our Third Party Website. A contract is not formed until we (or our Third Party Website) have approved your payment and you receive an email from us (or our Third Party Website) confirming that your order is being processed or you can manage and/or complete our surveys.

### **6. FEES AND PAYMENT**

This clause applies if you are purchasing Services on our Website. (This clause does not apply if you are purchasing our services through a Third Party Website.)

- (a) **(Fees)** You must pay any fees in the amounts and at the times set out in on our Website or as otherwise agreed in writing with you.
- (b) **(Payment obligations)** Unless otherwise agreed in writing, you must pay for all Services at the time of placing an Order.
- (c) **(GST)** Unless otherwise indicated, amounts stated on the Website do include GST. In relation to any GST payable for a taxable supply by Sport Wellbeing, you must pay the GST subject to Sport Wellbeing providing a tax invoice.
- (d) **(Card surcharges)** Sport Wellbeing reserves the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).
- (e) **(Online payment partner)** We may use third-party payment providers (**Payment Providers**) to collect payments for Services. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.
- (f) **(Pricing errors)** In the event that we discover an error or inaccuracy in the price at which your order was purchased, we will attempt to contact you and inform you of this as soon as possible. You will then have the option of purchasing your order at the correct price, or cancelling your order. If you choose to cancel your order and payment has already been debited, the full amount will be credited back to your original method of payment.
- (g) **(Refunds)** We do not provide refunds after purchase.

## 7. CANCELLATION

- (a) To the extent permitted by law, we reserve the right to terminate your access to any or all of the Services or any part of the Services, including your Account, at any time without notice, for any reason, provided that we refund to you any fees for Services which you have paid for and not received.
- (b) We may also terminate your access to any or all of the Services, and your Account, at any time without notice without issuing a refund if you breach any provision of these Terms.
- (c) **(Cancellation and your data)** Upon cancellation, termination or your request to cancel your access to our Services, we will delete any data and material associated with your Services and your Account. You won't be able to recover any of this after cancellation, termination or request to cancel your Services so we recommend you back up anything important to you. We won't be responsible to you for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out the cancellation, termination or request to cancel your Services.

## 8. INTELLECTUAL PROPERTY

- (a) Sport Wellbeing retains all intellectual property rights in the design of the Services, or those rights are owned by a third party. You must not attempt to copy, reproduce, manufacture or otherwise commercialise the Services.
- (b) In this clause, "**intellectual property rights**" means all copyright, trade mark, design, patent, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these terms both in Australia and throughout the world.

## 9. THIRD PARTY TERMS

- (a) Any Service that requires Sport Wellbeing to acquire goods and services supplied by a third party on your behalf may be subject to the terms & conditions of that third party (**Third Party Terms**), including 'no refund' policies. This includes any Payment Providers and the Third Party Website.

- (b) You agree to familiarise yourself with any Third Party Terms applicable to any such goods and services and, by instructing Sport Wellbeing to acquire the goods or services on your behalf, you will be taken to have agreed to such Third Party Terms.
- (c) To the maximum extent permitted under applicable law, we will not be liable for any acts or omissions of those third parties, including where such third parties cause delay in providing the Services or are negligent in providing services.

---

**PART C**

---

**FOR WHEN YOU BROWSE THIS WEBSITE...****10. ACCESS AND USE OF THE WEBSITE**

You must only use the Website in accordance with these terms and any applicable laws, and must ensure that your employees, sub-contractors and any other agents who use or access the Website comply with these terms and any applicable laws.

**11. YOUR OBLIGATIONS**

You must not:

- (a) copy, mirror, reproduce, translate, adapt, vary, modify, sell, decipher or decompile any part or aspect of the Website without the express consent of Sport Wellbeing;
- (b) use the Website for any purpose other than the purposes of browsing, selecting or purchasing Services, including doing a survey;
- (c) use, or attempt to use, the Website in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
- (d) use, or attempt to use, the Website in a manner that may interfere with, disrupt or create undue burden on the Website or the servers or networks that host the Website;
- (e) use the Website with the assistance of any automated scripting tool or software;
- (f) act in a way that may diminish or adversely impact the reputation of Sport Wellbeing, including by linking to the Website on any other website; and
- (g) attempt to breach the security of the Website, or otherwise interfere with the normal functions of the Website, including by:
  - (i) gaining unauthorised access to Website accounts or data;
  - (ii) scanning, probing or testing the Website for security vulnerabilities;
  - (iii) overloading, flooding, mailbombing, crashing or submitting a virus to the Website; or
  - (iv) instigate or participate in a denial-of-service attack against the Website.

**12. INFORMATION ON THE WEBSITE**

- (a) While we make every effort to ensure that the information on the Website is as up-to-date and accurate as possible, you acknowledge and agree that we do not (to the maximum extent permitted by law) guarantee that:
  - (i) the Website will be free from errors or defects (or both, as the case may be);
  - (ii) the Website will be accessible at all times;
  - (iii) messages sent through the Website will be delivered promptly, or delivered at all;
  - (iv) information you receive or supply through the Website will be secure or confidential; and
  - (v) any information provided through the Website is accurate or true.
- (b) We reserve the right to change any information or functionality on the Website by updating the Website at any time without notice, including product descriptions, prices and other Website Content.

**13. INTELLECTUAL PROPERTY**

- (a) Sport Wellbeing retains ownership of the Website and all materials on the Website (including text, graphics, logos, design, icons, images, sound and video recordings,

pricing, downloads and software) (**Website Content**) and reserves all rights in any intellectual property rights owned or licensed by it not expressly granted to you.

- (b) You may make a temporary electronic copy of all or part of the Website for the sole purpose of viewing it. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish the Website or any Website Content without prior written consent from Sport Wellbeing or as permitted by law.
- (c) In this clause, "**intellectual property rights**" means all copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of these terms both in Australia and throughout the world.

#### **14. LINKS TO OTHER WEBSITES**

- (a) The Website may contain links to other websites that are not our responsibility. We have no control over the content of any linked websites, and we are not responsible for that content.
- (b) Inclusion of any linked website on the Website does not imply our approval or endorsement of the linked website.

#### **15. THIRD PARTY PLATFORM**

- (a) This Website is powered by a third party platform and the terms and conditions of that third party may apply to your use of this Website to the extent applicable to you.
- (b) To the maximum extent permitted under applicable law and our agreement with our third party platform provider, we will not be liable for any acts or omissions of that third party, including in relation to any fault or error of the Website or any issues experienced in placing Orders.

#### **16. SECURITY**

Sport Wellbeing does not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with use of the Website. You should take your own precautions to ensure that the process that you employ for accessing the Website does not expose you to risk of viruses, malicious computer code or other forms of interference.

#### **17. REPORTING MISUSE**

If you become aware of misuse of the Website by any person, any errors in the material on the Website or any difficulty in accessing or using the Website, please contact us immediately using the contact details or form provided on our Website.

---

## PART D

### LIABILITY AND OTHER LEGAL TERMS...

---

#### 18. LIABILITY

- (a) To the maximum extent permitted by applicable law, Sport Wellbeing excludes completely all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to this Website, these terms or any Services or services provided by Sport Wellbeing.
- (b) All other express or implied representations and warranties in relation to Services and the associated services performed by Sport Wellbeing are, to the maximum extent permitted by applicable law, excluded.
- (c) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.
- (d) **(Indemnity)** You indemnify Sport Wellbeing and its employees and agents in respect of all liability for loss, damage or injury which is or may be suffered by any person arising from your or your representatives':
  - (i) breach of any of these terms;
  - (ii) use of the Website;
  - (iii) use of any Services or services provided by Sport Wellbeing; or
  - (iv) any use of the surveys including survey data and consents related to the surveys.
- (e) **(Consequential loss)** To the maximum extent permitted by law, under no circumstances will Sport Wellbeing be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Website, these terms or any Services or services provided by Sport Wellbeing (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)).

#### 19. GENERAL

##### 19.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in Victoria, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

##### 19.2 WAIVER

No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

##### 19.3 SEVERANCE

Any term of these terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these terms is not limited or otherwise affected.

##### 19.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

## 19.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the other party.

## 19.6 COSTS

Except as otherwise provided in these terms, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these terms.

## 19.7 ENTIRE AGREEMENT

This agreement, and any information provided to you concerning packages, pricing or the Services, embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these terms.

## 19.8 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(these terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these terms, and a reference to these terms includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including these terms) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (j) **(adverse interpretation)** no provision of these terms will be interpreted adversely to a party because that party was responsible for the preparation of these terms or that provision.

## 20. NOTICES

- (a) A notice or other communication to a party under this agreement must be:
  - (i) in writing and in English; and
  - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
  - (i) 24 hours after the email was sent; or
  - (ii) when replied to by the other party,
 whichever is earlier.,