

Subscription Terms & Conditions The Onero Programme

These Terms and Conditions of Use (**Terms**) govern your agreement with The Bone Clinic Pty Ltd ACN 603 418 757 (**TBC, us and we**, as applicable). For the purposes of these terms **you** means the Subscriber.

These Terms are important and you should ensure that you read them carefully and contact TBC with any questions before you agree to these Terms. You can contact TBC on licence@theboneclinic.com.au if you have any queries.

TBC may, in its absolute discretion, modify or amend these Terms from time to time and those modifications or amendments will be binding on you once displayed on the Site. We will endeavour to notify you of any material change to these Terms by either sending an email notice or by placing a notice on the Site. You have the right to terminate the Subscription on thirty (30) days notice should you not agree to any modification or amendment to these Terms.

By subscribing to and/or using the Site you acknowledge and agree that you have had a sufficient chance to read and understand these Terms and you agree to be bound by them. If you do not agree to these Terms your use of the Site and the Onero Programme will not be approved or authorised and TBC will not be obliged to provide any services to you.

1. SUBSCRIBERS

1.1 TBC will provide Subscriber Services to approved Subscribers subject to these Terms and the features and the policies and guidelines of TBC published from time to time.

1.2 A Subscriber will only become an approved Subscriber if all of the following prerequisites and conditions are met:

1.2.1 The Subscriber is:

- (a) an individual who is over the age of eighteen (18) years, a physiotherapist or exercise physiologist and operates as a sole trader; or
- (b) a physiotherapy or exercise physiologist clinic with up to five (5) physiotherapists;
- (c) a larger clinic, groups, learning institution, or hospital approved by TBC; and

1.2.2 The Subscriber has:

- (a) public liability insurance for an amount of not less than \$20 million dollars;
- (b) professional indemnity insurance for an amount of not less than \$5 million dollars; and
- (c) Works compensation insurance.

1.2.3 The Subscriber provides details of each nominated Coach (depending on the Subscription Level) as required by TBC from time to time.

~~1.2.4 The Subscriber has and supplies to TBC its ABN;~~

~~1.2.5 The Subscriber has and supplies to TBC its Provider Number;~~

1.2.6 The Subscriber has Premises which meet TBC's current operational requirements for provision of the Onero Programme to patients/clients.

1.3 Upon being granted access to the Site by TBC, the Subscriber will be issued with an account name and password which provides the Subscriber access to the Site.

1.4 The Subscriber is responsible for ensuring the security of the Subscriber's computer and maintaining the confidentiality of the Onero Programme, the Onero Materials, any issued user-id and password to the Site and of the Subscriber's data and User Content.

2. SUBSCRIPTION SERVICES

~~2.1 The provision of Subscriber Services by TBC will depend on the chosen subscription level of Subscriber Services (**Subscription Level**) by the Subscriber:~~

~~2.1.1 The Subscription Levels are as set out on TBC's website;~~

~~2.1.2 Each Subscription Level contains a variety of different features;~~

~~2.1.3 TBC reserves the right to vary the features of a Subscription Level in accordance with these Terms;~~

~~2.1.4 A Subscriber may change its Subscription Level with the consent of TBC provided the Subscriber pays the appropriate fee for that Subscription Level and any variation fee that may be applicable.~~

2.2 The Subscriber will pay the current Subscription Fee for the Subscriber Services for the agreed Subscription Level and for the stated period of time applicable to the Subscription (**Term**):

2.2.1 The Subscription Fee will be as set by TBC from time to time;

2.2.2 The Subscription Fee must be paid in accordance with TBC's current payment requirements for the Subscription Fee;

2.2.3 TBC may increase or decrease the Subscription Fee in its sole discretion.

2.3 The Subscriber Services will be provided by TBC to the Subscriber for the Term.

2.4 On expiry of the Term, the Subscriber must pay the Annual Fee for the Subscription to roll over for a subsequent Term in accordance with these Terms.

~~2.5 On termination, all outstanding Fees will become payable by the Subscriber to TBC.~~

~~2.6 Subject to clause 2.7, the Subscriber will not be entitled to a refund of any Subscription Fee paid by the Subscriber on termination of the Subscription for any reason whatsoever.~~

~~2.7 The Subscription is subject to and conditional upon the Subscriber and each Coach:~~

~~2.7.1 successfully completing all modules of the Training Programme; and~~

~~2.7.2 being issued with a signed Certificate of Completion by TBC.~~

~~2.8 A Certificate of Completion:~~

~~2.8.1 applies to a Subscriber and a certificate issued for its nominated Coaches provided the Subscriber maintains the prerequisites for Subscription as set out in clause 1.2;~~

~~2.8.2 applies for the Term and expires on termination of the Subscription for any reason whatsoever;~~

~~2.8.3 is not transferrable; and~~

~~2.8.4 cannot be assigned to another Subscriber without the prior written consent of TBC.~~

~~2.9 TBC will provide the Subscriber with reasonable email and telephone support relating to the Onero Programme during the Term. TBC will provide additional support to Subscribers on written request at TBC's usual rates and charges for the provision of services to third party clients of TBC.~~

3. THE ONERO PROGRAMME

3.1 The Subscriber must at all times:

3.1.1 only run the Onero Programme from its Premises;

3.1.2 prescribe, deliver and administer the Onero Programme in the exact form as described in the Training Programme and Onero Materials, without any amendment, omission or addition, and strictly within the limits and according to the instruction, training and protocols provided by TBC from time to time;

3.1.3 ensure that the Onero Programme is administered by or under the direct supervision of a physiotherapist or exercise physiologist (who holds current registration by the appropriate professional body and complies with all statutory requirements in that regard) who is the Subscriber and/or a Coach;

3.1.4 ensure that the Onero Programme is delivered:

(a) by a Coach; and

(b) to no more than eight (8) clients / patients per one (1) certified Coach;

3.1.5 maintain Premises:

(a) in accordance with the requirements of TBC as set out in clause 1.2.6; and

(b) that are suitable and safe, and comply with all statutory obligations relating to the use of the Premises and the activities conducted in them;

3.1.6 maintain insurance against all reasonable risks in connection with the Premises and business of the Subscriber as set out in clause 1.2.2;

3.1.7 without the prior written consent of TBC, not be involved or interested, either directly or indirectly, in the development, manufacture, production, importation, sale or advertisement of any other exercise programme which is like or comparable to the Onero Programme in any manner which might compete, conflict or interfere in any way with the use of the Onero Programme;

3.1.8 promptly deal with and professionally manage all inquiries and activities relating to the Onero Programme;

3.1.9 report to TBC all details of complaints received by the Subscriber (or a Coach) which relate to the Onero Programme;

3.1.10 observe all directions and instructions given by TBC in relation to the sale, distribution, exploitation or conduct of the Onero Programme, and in the absence of any such directions or instructions in relation to any particular matter, to act in such manner as is reasonably the most beneficial to TBC's interests;

~~3.1.11 only use pre-approved marketing materials provided by TBC and obtain prior written approval from TBC for any marketing materials (digital, print or other media) otherwise related to the Onero Programme before release;~~

~~3.1.12 notify TBC in writing if it is unable to pay its debts, is insolvent and/or commits an Insolvency Event;~~

~~3.1.13 conduct its business as an independent proprietor, in its own name, as a separate business from TBC and not as an agent, partner, franchisee or employee of TBC, (e.g., never refer to its business as The Bone Clinic or use The Bone Clinic or The Onero Programme in its business name);~~

3.1.14 not assign, transfer, charge or deal with, in any manner, any of its rights under this Agreement without the prior written consent of TBC;

- 3.1.15 ~~keep true, accurate and current records to clearly show all exercise prescription transactions and proceedings relating to the Onero Programme. The Subscriber agrees that these records must be kept separate from those relating to matters not relating to the Subscription and that the records relating to the Onero Programme will become the property of TBC when created;~~
- 3.1.16 not be a party to the doing of any act, matter or thing whereby the Intellectual Property may be prejudicially affected or challenged, and must immediately bring any improper or wrongful use of the Intellectual Property of which it becomes aware to the attention of TBC;
- 3.1.17 not copy, reproduce, vary or adapt in any way, either in whole or in part, the Onero Programme or the Onero Materials;
- 3.1.18 keep true and accurate compliance records using the Compliance Database. These compliance records are required by TBC for research purposes;
- 3.1.19 ~~not independently publish data generated from the conduct of the program without consultation with and approval from TBC;~~
- 3.1.20 not make any representations or give any warranties in relation to the Onero Programme, other than those authorised by TBC;
- 3.1.21 promote TBC's goodwill and generally safeguard the interests of TBC.
- 3.2 ~~The Subscriber may set all reasonable client/patient fees to enable the Subscriber to provide the Onero Programme to its clients or patients. The Subscriber must on request provide a written report to TBC about the level of fees set by the Subscriber.~~
- 3.3 For compliance and quality assurance purposes, upon one (1) day's written notice, the Subscriber agrees to allow the authorised officers of TBC to:
- 3.3.1 have access to the Premises at all reasonable times to inspect the Premises, equipment, compliance records and processes used in delivery of the Onero Programme; and
- 3.3.2 to observe the operation of the Subscriber's business and to ensure compliance with quality and competency standards and the provisions of these Terms.
- 3.4 TBC may, in its sole discretion, require Subscribers and/or Coaches to undergo additional training, at the Subscriber's cost, where TBC is of the opinion that the Subscriber and/or its Coaches require additional training in the Onero Programme.
- 3.5 The Subscriber must disclose details of any other premises of the Subscriber where the Subscriber conducts its business and intends to conduct the Onero Programme.
- 4. THE SITE – ONERO ACADEMY**
- 4.1 ~~Subject to these Terms, TBC will provide the Subscriber with access to the Site and the Onero Academy as part of the Subscription.~~
- 4.2 The Subscriber acknowledges and agrees that TBC at all times retains all right and title to all of TBC's content on the Site (**Content**). For clarity, **Content** includes the Onero Programme and all related Onero Materials.
- 4.3 The Subscriber is not authorised to copy or reproduce the Content in any way.
- 4.4 The Subscriber must not add to, remove or vary any Content unless permitted by TBC.
- 4.5 ~~TBC will during the Term list the Subscriber's business on the Site and may provide the Subscriber with its own business listing page on (or accessible via) the Site.~~
- 4.6 ~~The Subscriber must comply with all of TBC's policies, procedures and guidelines for the submission of the Subscriber's business listing information on the Site and TBC is not liable in the event that the Subscriber fails to comply with such policies, procedures and guidelines.~~
- 4.7 ~~The Subscriber acknowledges and agrees that TBC is not responsible in any respect for the content provided by the Subscriber on the Site and the Subscriber warrants that all information it supplies to TBC and the Site is true and accurate.~~
- 4.8 ~~TBC reserves the right to reject, remove and/or cancel any business listing of a Subscriber on the Site and/or any content that does not comply with these Terms or the policies and guidelines of TBC as advised from time to time.~~
- 4.9 ~~The Subscriber is responsible for maintaining (and updating) the accuracy of the Subscriber's information on the Site.~~
- 4.10 ~~The Site may contain links to other websites as well as content added by people other than TBC. TBC does not endorse, sponsor or approve any such user generated content on the Site or any content available on any linked website.~~
- 4.11 The Subscriber acknowledges and agrees that:
- 4.11.1 The Subscriber must not allow any other person other than a Coach access to the Subscriber's issued user-id and password and the Subscriber will be responsible for all the Subscriber's account information (if any) and use of the Subscriber's account by anyone other than the Subscriber;
- 4.11.2 The Subscriber must notify TBC immediately if the Subscriber becomes aware of any unauthorised use of the Subscriber's issued user-id and/or password;
- 4.11.3 The Subscriber's use of the Site is the Subscriber's responsibility and is entirely at the Subscriber's own risk and the Subscriber accepts full responsibility for all and any information that the Subscriber transmits via the Subscriber's access to the Site;
- 4.11.4 The Subscriber must not use the Site in a way that breaches any of these Terms or any laws, regulations, standards or codes as enacted or modified from time to time;
- 4.11.5 The Subscriber must not use, reproduce, sell, resell or otherwise exploit any of the Content or any part of it for commercial purposes other than in accordance with these Terms. In particular, the Subscriber agrees that, subject to the law, the Subscriber will keep confidential any information of an employee or associate of TBC which forms part of the Content;
- 4.11.6 The Subscriber must not modify, copy, adapt, distribute, translate or create derivative works of any kind whatsoever of any of the Content;
- 4.11.7 TBC retains complete editorial control over the Site and may change, modify, alter, amend, delete any of the Content or cease the operation of the Site at any time in its sole discretion;
- 4.11.8 The Site will not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes);
- 4.11.9 The Site will not be error free and TBC does not guarantee that the Site will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the Site;
- 4.11.10 The Subscriber is responsible for acquiring and maintaining all equipment, services and software necessary to access the Site. The Subscriber is responsible for all telecommunication fees or charges incurred as a result of connecting to the Site.
- 4.12 The Subscriber acknowledges that it has reviewed the terms of TBC's Privacy Policy and Disclaimer as set out on the Site.
- 4.13 The Subscriber grants to TBC permission to publicise that the Subscriber is a subscriber of TBC.
- 5. SUBSCRIBER SITE CONTENT**
- 5.1 Where the Subscriber contributes to the Site in any way or provides TBC with information, the Subscriber agrees and warrants that:
- 5.1.1 any and all information supplied by the Subscriber is true, accurate, current and complete and the Subscriber either owns or has right to supply the information supplied (including any photographic material);
- 5.1.2 the Subscriber will not:
- (a) harvest or collect email addresses or other contact information of other users of the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- (b) unless otherwise agreed with TBC, use automated scripts to collect information from or otherwise interact with the Site;
- (c) take any action that imposes or may impose an unreasonable or disproportionately large load on the Site or the Site infrastructure of TBC;
- (d) impersonate any person or entity, or falsely state or otherwise misrepresent itself, its age or its affiliation with any person or entity;
- (e) solicit personal information from anyone under the age of eighteen (18) or solicit passwords or personally identifying information for commercial or unlawful purposes;
- (f) intimidate or harass another; use or attempt to use another's account, service or system without authorisation from TBC, or create a false identity on the Site.
- 5.1.3 the Subscriber will not upload, post, transmit, share, store or otherwise make available:
- (a) any content that TBC deems to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
- (b) any unsolicited or unauthorised advertising, photos, solicitations, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation;
- (c) publicly on the Site any private information of any third party, including, addresses, phone numbers, email addresses and credit card numbers;
- (d) any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (e) content that would constitute, encourage or provide instructions for a criminal offence, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- (f) content that, in the sole judgment of TBC, is objectionable or which

restricts or inhibits any other person from using or enjoying the Site, or which may expose TBC or its users to any harm or liability of any type;

5.2 The Subscriber is solely responsible for the photos, profiles (including name, image, and likeness), messages, notes, text, information, music, video, listings, and other content that the Subscriber uploads, publishes or displays (post) on or through the Site, or transmit to or share with other users (collectively the **User Content**);

5.3 The Subscriber acknowledges and agrees that:

5.3.1 the Subscriber may not post, transmit, or share User Content on the Site that the Subscriber did not create, the Subscriber does not own or that the Subscriber does not have permission to post;

5.3.2 TBC may, but is not obligated to, review the Site and may delete or remove the Content or User Content in its sole discretion, for any reason or no reason, including User Content that in the sole judgment of TBC violates these Terms, or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of users or others;

5.3.3 all User Content comes from either the Subscriber or other users of the Site. The comments, opinions, and statements posted by users reflect the views of the user who makes the post and do not necessarily reflect the views of TBC. TBC assumes no responsibility for any consequence relating directly or indirectly to any action or inaction the Subscriber takes based on the Content and User Content available via the Site. The Subscriber must evaluate, and bear all risks associated with the use of any Content and User Content including any reliance on the accuracy, completeness, or usefulness of posted User Content.

5.4 When the Subscriber posts User Content to the Site the Subscriber:

5.4.1 authorises and directs TBC to make such copies thereof as TBC deems necessary in order to facilitate the posting and storage of the User Content on the Site;

5.4.2 automatically grants and represents and warrant that the Subscriber has the right to grant, to TBC an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or its promotion, to prepare derivative works of, or incorporate into other works, and to grant and authorise sublicenses of the foregoing; and

5.4.3 acknowledges and agrees that TBC may remove the User Content from the Site at any time. If the Subscriber chooses to remove the User Content, the license granted above will automatically expire. The Subscriber acknowledges that TBC may retain archived copies of the User Content.

5.5 The Subscriber is solely responsible at the Subscriber's sole cost and expense for creating backup copies and replacing any User Content the Subscriber posts or stores on the Site or provided to TBC.

5.6 TBC:

5.6.1 is not responsible for any User Content or the content on websites operated by parties other than TBC;

5.6.2 does not assert any ownership over the User Content. The Subscriber retains full ownership of all of its User Content and any intellectual property rights or other proprietary rights associated with its User Content.

5.7 The Subscriber agrees to abide any User Content Policy that may be implemented by TBC from time to time. Any User Content Policy will be located for access by the Subscriber on the Site.

5.8 If the Subscriber has any complaints or objections to material or content posted on the Site or if the Subscriber believes that material or content posted on the Site infringes a copyright that the Subscriber holds, the Subscriber should contact TBC immediately.

5.9 TBC will investigate any complaints or objections referred to in this clause and will, where appropriate, use all reasonable endeavours to remove any inappropriate or illegal content from the Site within a reasonable time after investigation.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 TBC owns or has the rights to use the Onero Programme, the Onero Materials, the Site and the Content.

6.2 Nothing in these Terms constitutes a transfer of any intellectual property rights to the Subscriber.

6.3 Except as permitted by the *Copyright Act 1968* (Cth), no part of the Onero Programme, the Site or the Content may be modified or reproduced by any process without the specific written permission of TBC.

6.4 If the Subscriber develops any Improvements, the Subscriber shall notify TBC of the nature of the same and the mode of carrying out the Improvements with practical effect, prior to implementing or trialing such Improvements on any client. If TBC approves such Improvements, then they shall be implemented by TBC and as TBC directs. No changes or Improvements will be implemented without the approval of TBC.

6.5 The Subscriber hereby assigns to TBC all right, title and interest to all Improvements

and irrevocably grants to TBC the right to apply for any incident of Intellectual Property available in respect of such Improvements.

7. WARRANTIES & INDEMNITIES

7.1 The Subscriber represents and warrants to TBC that:

7.1.1 it has the legal capacity and authority to enter into these Terms; and

7.1.2 it meets and will maintain the requirements set out in clause 1.2 for the Term and any extension of the Term.

7.2 The Subscriber will, at its own expense, indemnify and hold harmless TBC, its affiliates, successors and assigns, and its and their directors, officers, employees, agents and other licensees, against any claim, demand, cause of action, debt, expense or liability (including attorney's fees and costs) arising out of or in connection with this Agreement, including the following:

7.2.1 any breach of these Terms by the Subscriber or its directors, officers, employees, agents and other licensees;

7.2.2 any use of the Intellectual Property not in accordance with these Terms;

7.2.3 the Subscriber's information and images contained in any business listing placed by the Subscriber;

7.2.4 any non-compliance with these Terms by the Subscriber, its officers or employees;

7.2.5 use of the Site by persons other than the Subscriber using the Subscriber's issued user-id and/or password;

7.2.6 the Subscriber's use of the Site which is negligent or infringes the rights of any third party;

7.2.7 the User Content; and

7.2.8 any claim, demand, cause of action, debt, expense or liability resulting from the use or administration of the Onero Programme, whether administered in accordance with TBC's instructions or otherwise.

8. DISCLAIMER

8.1 The Subscriber acknowledges that:

8.1.1 TBC gives no warranties as to and does not vet, authorise or endorse the accuracy, currency, suitability, completeness or relevance of any information contained or accessed through the Site including the Content and User Content (**Information**);

8.1.2 TBC takes no responsibility for the currency, accuracy, completeness or relevance of the Information or for programming bugs or computer viruses, faults or errors in the Site or the Information;

8.1.3 TBC does not examine, determine or warrant the certification, licensing, competence, insurance, solvency or information of any business listed on the Site. TBC relies on its Subscribers to provide accurate information. TBC assumes no responsibility for verifying the information provided.

8.1.4 Use of the Site and the Information is voluntary and to the extent permitted by law, TBC will not be liable for any damages to any user of the Site for the selection of businesses or listings or for the services provided by such businesses/listings;

8.1.5 The Subscriber will not rely solely on the Information in determining whether to use the Site and the Subscriber will make its own enquiries as to the suitability of the Information;

8.1.6 TBC may, without notice to the Subscriber, and at any time, modify or discontinue the Subscriber's access to the Site;

8.1.7 TBC does not warrant or represent that:

(a) any Content, User Content message posted, uploaded or otherwise transmitted to or from the Site has not been altered in transmission;

(b) any message posted, uploaded or otherwise transmitted to or from the Site will be received by the intended recipient; or

(c) any information downloaded or otherwise transmitted to the Subscriber from the Site is free from viruses, faults or errors;

8.1.8 TBC may, in its sole discretion and without notifying the Subscriber, elect to allow other parties which the Subscriber would consider and/or class as being in competition with the Subscriber to link and/or place advertisements on the Site.

9. LIABILITY

9.1 The Subscriber understands and agrees that:

9.1.1 TBC makes no representations or assurances and gives no warranties as to the earning capacity of the Subscriber in using Onero Programme under these Terms and the Subscriber accepts all financial risks associated with entering into these Terms and in providing the Onero Programme to its clients or patients;

9.1.2 TBC is not liable to pay or reimburse the Subscriber for any claims for any expenses incurred by the Subscriber in the performance of its functions and duties under these Terms and in providing the Onero Programme to its clients or patients;

9.1.3	TBC is not responsible for any acts or defaults of the Subscriber or of the Subscriber's employees or representatives;	11.1.5	Confidential Information means all information, in any form, written or unwritten, including trade names, trade secrets, domain names, client lists, client information and contact details, logos, methods described in patent applications, software, hardware, source code, methodologies, advice, processes, procedures, inventions, ideas, know-how, technical expertise or concepts, which is provided or made available by TBC or its associates to the Subscriber (whether orally or in writing) or to a related entity or a related body corporate, including in relation to TBC's business, the Onero Programme or any Intellectual Property of TBC but excluding information already in the public domain, except where that information has become available by virtue of a breach of this agreement;
9.1.4	TBC will not have any liability to the Subscriber or others for any unauthorised transactions made using the Subscriber's password or account;	11.1.6	Course Training Fee means the fee for undertaking and completing the training in the Onero Programme;
9.1.5	the use or non-use of the Subscriber's services by third parties referred to through the Site; and	11.1.7	GST means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of these Terms;
9.1.6	the unauthorised use of the Subscriber's password or account could cause the Subscriber to incur liability to both TBC and other users.	11.1.8	Improvement means any variation to the Onero Programme or the Intellectual Property, conceived of or developed by either TBC or the Subscriber, which could improve them in any way;
9.2	Any act or omission which, if it were an act or omission of the Subscriber, would be a breach of these Terms on its part, is taken to be such an act or omission for which the Subscriber is responsible if the act is done or omitted:	11.1.9	Insolvency Event means any of the following events in respect of either party:
9.2.1	by any corporation or association which is controlled directly or indirectly in any manner by the Subscriber, or	(c)	An application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator in respect of the party (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
9.2.2	by any firm or unincorporated body of which the Subscriber is a partner or member.	(d)	Proceedings are initiated with a view to obtaining an order for the winding up or similar process of the party or an order is made or any effective resolution is passed for the winding up of the party;
9.3	To the full extent permitted by law TBC excludes:	(e)	The party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
9.3.1	all liability in respect of loss of data, interruption of business or any consequential or incidental damages; and	(f)	A controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the party;
9.3.2	all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms.	(g)	The party is or is deemed or presumed by law or a court to be insolvent;
9.4	These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible, TBC limits its liability in respect of any claim to, at its option:	(h)	The party takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the party;
9.4.1	in the case of goods:	(i)	Anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the party under the law of any applicable jurisdiction;
(a)	the replacement of the goods or the supply of equivalent goods;	11.1.10	Intellectual Property means:
(b)	the repair of the goods;	(a)	all proprietary rights (including the right to make application for such rights) which relate, refer or pertain to the Onero Programme, any Improvements, the Confidential Information or the business of TBC, which are provided under patent law, copyright law, trademark law, design patent and industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, trade names, trade dress or business reputation, or the expression or use thereof, and including all past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief;
(c)	the payment of the cost of replacing the goods or of acquiring equivalent goods; or	(b)	all applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in the Onero Programme;
(d)	the payment of having the goods repaired, and	(c)	registered trade mark 1694648, and
9.4.2	in the case of services:	(d)	registered trade mark 1713210, and any Improvement to any of the above.
(a)	the supply of the services again; or	11.1.11	Monthly Subscription Fee means the ongoing monthly fee for the Subscription Services;
(b)	the payment of the cost of having the services supplied again.	11.1.12	Onero Materials mean all the materials, information, manuals, templates, brochures, equipment lists, databases and other like made available to the Subscribers as part of the Onero Programme;
10. TERMINATION		11.1.13	Onero Programme means the exercise programme, which implements the treatment of a bone disorder which is delivered by a Coach and as set out in the Training Programme;
10.1	The Subscription (and these Terms) will terminate automatically if, for any reason, TBC ceases to operate the Site.	11.1.14	Premises means the premises of the Subscriber's business as notified to TBC and from where the Onero Programme will be provided to clients, and any other premises that are agreed in writing by the parties from time to time to be the Premises;
10.2	Either party may terminate the Subscription (and these Terms) upon thirty (30) days written notice to the other party.	11.1.15	Site means the TBC's website for the provision of the Onero Programme
10.3	TBC may otherwise terminate the Subscription (and these Terms) immediately, on notice to the Subscriber, if the Subscriber has:		
10.3.1	breached these Terms in any way (including a failure to pay);		
10.3.2	suffered an Insolvency Event;		
10.3.3	ceased carrying on its business;		
10.3.4	brought the reputation of TBC into disrepute.		
10.4	On termination of these Terms:		
10.4.1	the Subscriber and any Coach must immediately cease using the Onero Programme and the Onero Materials;		
10.4.2	the Subscriber must immediately cease using any Intellectual Property, information, materials or knowledge of TBC acquired pursuant to these Terms for any purpose (including the Onero Programme and the Onero Materials); and		
10.4.3	the Subscriber must immediately return to TBC all Intellectual Property, property, information and materials it holds to the extent that it is possible to do so.		
11. INTERPRETATION			
11.1	For the purposes of these Terms:		
11.1.1	Annual Fee means the annual subscription renewal fee set by TBC from time to time;		
11.1.2	Certificate of Completion means a certificate issued by TBC to the Subscriber and/or Coach for completion of the Training Programme;		
11.1.3	Coach means an individual Subscriber or person employed by the Subscriber to train clients in the Onero Programme and who has been certified by TBC as having completed Training Programme with TBC and has received a Certificate of Completion;		
11.1.4	Compliance Database means an electronic database designed to collect attendance and performance information relating to the Onero Programme;		

which includes the Onero Programme, the Training Programme and the Onero Materials and also known as the Onero Academy;

- 11.1.16 **Subscriber** means a third party who has a Subscription on these Terms;
- 11.1.17 **Subscriber Services** mean the licence of the Onero Programme by TBC by way of Subscription to a third party subscriber at a chosen Subscription Level on these Terms;
- 11.1.18 **Subscription** means the licence granted by TBC to the Subscriber to use the Onero Programme, the Onero materials and the Site on these Terms;
- 11.1.19 **Subscription Fee** means the fees for the subscription by a Subscriber to the Subscriber Services and includes the:
- (a) Course Training Fee;
 - (b) Monthly Subscription Fee;
 - (c) Annual Fee (if applicable); and
 - (d) Any other fee payable by the Subscriber to TBC.

Unless stated otherwise, all Subscription Fees as GST exclusive.

- 11.1.20 **Subscription Level** means the category of Subscriber Services chosen by a Subscriber;
- 11.1.21 **Training Programme** means the Onero Programme training program as provided via the Site.

12. GENERAL

- ~~12.1 Except as specifically provided in these Terms, all fees paid are non-refundable.~~
- 12.2 TBC makes no representation or guarantee as to the effectiveness of the Onero Programme, the Onero Materials, any advertising, affiliation or business listing on the Site.
- 12.3 The Subscriber must not assign, sublicense or otherwise deal in any other way with any of the Subscriber's rights under these Terms.
- 12.4 The Subscriber must keep all material (including confidential information, material and technology, disclosed provided and/or transmitted to the Subscriber) confidential.
- 12.5 If a provision of these Terms is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 12.6 TBC is not liable for any delays in performing any obligation under these Terms caused by circumstances beyond its reasonable control, including but not limited to catastrophes, fire, internal or external strike, wars, terrorists acts, internal or external breakdowns or failure, and, in general, any failure of a Subscriber to act in a timely or appropriate way.
- 12.7 These Terms embodies the entire agreement between the parties and supersedes all previous agreements, understandings, negotiations, warranties and representations.
- 12.8 These Terms will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:
- 12.8.1 that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
 - 12.8.2 if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these Terms will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability;
- 12.9 Each party must at its own expense do everything reasonably necessary to give full effect to these Terms and the events contemplated by it.
- 12.10 These Terms are governed by the laws of Queensland, Australia and each party submits to the jurisdiction of the courts of Queensland, Australia.
- 12.11 Any additional terms and conditions that appear on the Site will govern the Subscriber's use of, and access to, certain sections of the Site where they appear (**Additional Terms**). Since these Additional Terms form part of the Terms the Subscriber is bound by them and should review them wherever they are relevant to the Subscriber when using the Site.