

Tinnitus Services Pty Ltd – Terms and Conditions

1. Preamble

- 1.1 These terms and conditions of use (**Terms**) apply to your access and use of the Tinnitus Services Pty Ltd ACN 667 749 975 (**Tinnitus Services, we, us, our**) website available at [www.tuneout.com.au] (**Website**) and the Course.
- 1.2 By accessing or using the Website or the Course, you acknowledge that you have read and understood and agree to be bound by these Terms. If you do not agree to be bound by these Terms, you must immediately stop all further access and use of the Website and the Course.
- 1.3 We may amend these Terms from time to time by posting an updated version of these Terms on the Website, unless it is an essential term, in which case we will provide you notice

YOU SHOULD BE AWARE OF SEVERAL KEY TERMS

In this summary we outline some of the key terms that apply to you. This summary is designed to assist you by disclosing certain terms that affect you. However it is not a substitute for reading and understanding these Terms, and it is not intended to substitute, expand or amend these Terms. Please contact us if you have any questions.

Access to course content

By purchasing the Course you signify to us that you accept and agree to these Terms. We will not grant you access to the Course unless and until you signify acceptance of these Terms.

Access

Access to our Course is by payment of the Fee. Once you have paid the Fee, you will receive access to the Course for the duration of 6 months. This Fee is non-refundable except to the extent that clause 6.6 or the Non-Excludable Obligations apply

Disclaimer

This Course is only available to individuals over the age of 18, residing in Australia and is aimed at reducing awareness of and distress caused by tinnitus. This Course is intended for informational and educational purposes only, and does not constitute medical advice, diagnosis or treatment. By purchasing this Course, you warrant that you have sought diagnosis, opinion and treatment of an appropriately qualified audiologist and / or medical practitioner before deciding if this course is right for you. You should not delay, disregard or discontinue seeking medical assistance because of the information provided in this course. You should always obtain independent medical advice appropriate to your own circumstances before acting or relying on information provided to you in this course.

Your liability and warranties

Your access to, and use of, the Website and the Course is at your own risk. With the exception of any Non-Excludable Obligations or to the extent the liability is caused by our negligence or breach of these Terms, we exclude any liability for any damage (including personal injury) and loss (including indirect or consequential damages) arising from or in relation to the use of the Website and the Course.

2. Grant of access to Course upon payment of Fee for 6 months

2.1 You may purchase a right to access and use the Course by paying, in the manner specified in this agreement, the Fee for the Course.

2.2 On receipt of the Fee, we grant to you a non-exclusive, non-transferable, revocable licence to access and use the Course through the Platform.

2.3 The licence to access and use the Course commences on receipt, in accordance with these Terms, of the Fee for the Course, and will continue for 6 months from that date (**Licence Term**), unless suspended or cancelled in accordance with clause 12 of these Terms.

3. Fee

3.1 The amount of Fee payable for the Course, as specified on the Website, is:

- (a) specified, and payable, in Australian dollars; and
- (b) inclusive of all taxes, charges, levies, duties or other government imposts imposed under the laws of the Commonwealth and each State and Territory of Australia, save for Commonwealth goods and services tax.

3.2 Except in relation to any Non-excludable Obligations and subject to clause 6.6 Fees paid by you are non-refundable.

3.3 Payment of Fees may be effected by any of the methods of payment listed on the Website.

3.4 Notwithstanding any other provision of these Terms or statement on the Website, payment of a given amount will not be deemed to have occurred unless and until we receive the relevant amount, in cleared funds.

3.5 Notwithstanding paragraph 3.1, we reserve the right to charge, impose or pass onto you, any surcharge, administration fee or other amount payable by it as a consequence of agreeing to accept a particular method of payment. To the extent practicable the nature and amount of such surcharge, administration fee or other amount will be specified on the Website.

3.6 You agree to reimburse us for any dishonour fees or like amounts incurred by us as a consequence of a payment made by you being refused or dishonoured by your bank, financial institution or credit provider.

4. Non transferable right to access

4.1 The rights to access and use the Course is not transferrable.

4.2 The username and password issued to you is personal to you, and you must ensure that such username and/or password is not distributed, communicated, disclosed or transferred to any other person.

4.3 We assume no responsibility for any loss that you may sustain due to compromise of your account login credentials due to no fault of our own and/or your failure to follow or act on any notices or alerts that we may send to you. If you believe your username or password has been compromised, please contact us immediately, at info@tuneout.com.au. You must not on-supply, or provide access to, the Course, or any content forming part of the Course, to any person(s).

5. Access and usage restrictions

5.1 You must not:

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- (a) reverse engineer, disassemble, or decompile any software forming part of the Platform, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;
- (b) copy or download, in a systematic manner, any content, graphics, video, text or animation from the Platform, the Course, or communicate or otherwise distribute such systematically-obtained content, graphics, video, text or animation;
- (c) directly or indirectly introduce any virus, worm, trojan or other malicious code into the Platform, or in any other manner whatsoever corrupt, degrade or disrupt the operation of the Platform;
- (d) adapt, modify, or create any derivative work from, the Course, other than as necessary to complete the Course;
- (e) sell, translate, network, publish, commercialise, rent, lease, assign, transfer, loan, or otherwise distribute all or part of the Platform or the Course, or any adaptation, modification or derivative of all or part of the Platform or the Course;
- (f) use the Platform and/ or Course for any unlawful purpose;
- (g) do anything inconsistent with these Terms; or
- (h) remove, obscure or interfere with any copyright, acknowledgment, attribution, trade mark, warning, disclaimer statement, rights management information or serial numbers affixed to, incorporated in or otherwise applied in connection with the Platform or Course.
- 6. No guaranteed access**
- 6.1 In order to access and use the Course, the Website and its services and features as intended, you must:
- (a) enable the Website to use cookies; and
- (b) grant the Website any other permissions and access to your Device that it requires from time to time.
- 6.2 If you do not grant these required permissions and access, you may be unable to access and use the Website or some of its features and services.
- 6.3 You are responsible for the security of your Device (including any data stored on that Device) and for using appropriate and up-to-date software on your Device to detect and manage the threat posed by viruses and other harmful code.
- 6.4 You acknowledge and agree that while Tinnitus Services will use its best endeavours to ensure the Website and Course's availability, continuity, reliability, accuracy, currency and security, Tinnitus Services makes no representations, warranties or guarantees in relation to the Platform. Except to the extent caused or contributed to by us, Tinnitus Services will not be liable if the Platform, Website or Course are unavailable for any reason, including directly or indirectly as a result of:
- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent, malicious or wilful acts or omissions of third parties (including Tinnitus Services's third party service providers);
- (c) maintenance or repairs carried out by Tinnitus Services or any third party service provider in respect of any of the systems used in connection with the provision of the Platform or the Website;
- (d) any events beyond Tinnitus Services' control; or
- (e) services provided by third parties ceasing or becoming unavailable.
- 6.5 We reserve the right to:
- (a) suspend or withdraw your access to and use of the Website and/or any of its services, features or components; and/or
- (b) add to, amend, remove, or disable access to, any part of the Website and/or any of its services, features or components,
- in each case at any time and for any reason (at our discretion), by providing notice to you. If reasonably requested by us, you must immediately:
- (c) stop all further access and use of the Website and its services; and
- (d) destroy, expunge, disable and/or restrict access (as applicable) to any information from the Website that you have printed or downloaded, and any information derived or generated from that information.
- 6.6 If we suspend, disable, remove or otherwise amend Your access to the Course under clause 6.5,
- (a) you have a right to seek a pro rata refund of the Fee, provided you have not breached these Terms; and
- (b) the refund in clause 6.6(a) will be calculated on the basis of the number of months and days remaining in the Licence Term.
- 7. Ownership of Intellectual Property Rights**
- 7.1 You agree that all rights, title and interest (including all Intellectual Property Rights) in the Platform and the Course remain vested in Tinnitus Services. The only rights granted to you by Tinnitus Services in respect of the Platform and Course (and the Intellectual Property Rights subsisting in each of them) are those granted under these Terms.
- 8. Privacy**
- 8.1 Tinnitus Services agrees that it will collect, store, distribute and communicate 'personal information' (as that term is defined in the *Privacy Act 1988* (Cth)), which is provided to it by you, or is otherwise collected by Tinnitus Services as a result of the access to, and use of, the Website, Course and Associated Course Modules and/or the Platform, in accordance with the Privacy Policy.
- 9. Goods and services tax**
- 9.1 Words or expressions used in this clause 9 which are defined in the *A New Tax System (Goods and Services*

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- Tax) Act 1999 (Cth) have the same meaning in this clause.*
- 9.2 Any consideration or amount to be paid or provided for a supply made under or in connection with this agreement, unless specifically described as GST inclusive, does not include GST payable on that supply.
- 9.3 If a party (**Supplier**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specified as **GST inclusive**):
- (a) the consideration payable or to be provided for that supply but for this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Provider on that supply; and
 - (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 10. Disclaimer**
- 10.1 Material provided on the Website and the Course is for information purposes only. The information provided on the Website is not comprehensive and does not constitute health or medical advice.
- 10.2 The Course is aimed at reducing awareness of and distress caused by tinnitus through cognitive behaviour therapy. By purchasing this Course, you warrant that:
- (a) you have sought diagnosis, opinion and treatment of an appropriately qualified audiologist and / or medical practitioner before deciding if this course is right for you;
 - (b) You are over 18 years of age and reside in Australia; and
 - (c) if you experience any pain, discomfort or worsening of your tinnitus you warrant that you will cease use of the Course and seek medical advice from an appropriately qualified audiologist or medical practitioner.
- 10.3 You understand that the information and resources provided on our Website or in the Course is not a substitute for medical attention, examination, diagnosis or treatment, and you agree that accessing or using that information does not create any health service provider-client or other similar relationship with us. You should always obtain medical or other professional advice, appropriate to your own circumstances, before acting or relying on any content provided on the Website or in the Course.
- 11. Liability and Indemnity**
- 11.1 To the extent that you acquire goods or services from Tinnitus Services as a consumer within the meaning of the Australian Consumer Law, you may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.
- 11.2 Nothing in this clause 11 operates to exclude, restrict or modify the application of any condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (a) contravene that statute; or
 - (b) cause any term of this agreement to be void,
- (Non-excludable Obligation).**
- 11.3 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these Terms.
- 11.4 Except in relation to Non-excludable Obligations or to the extent caused by our negligence or breach of these Terms, Tinnitus Services' liability to you arising directly or indirectly under or in connection with these Terms and whether arising under any indemnity, statute, in tort, or on any other basis in law or equity is limited as follows:
- (a) Tinnitus Services excludes all liability for loss of revenue, loss of goodwill, loss of customers, loss of capital, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data, loss of anticipated savings or benefits, or any indirect, consequential or special loss, damage, cost or expense or other claims for consequential compensation, incurred by or awarded against you under or in any way connected with this agreement; and
 - (b) Tinnitus Services' total aggregate liability under or in any way connected with this agreement is limited to the amount of Fee paid by you to Tinnitus Services under this agreement.
- 12. End of licence**
- 12.1 After the Licence Term, your access to the Course will automatically lapse.
- 13. Defined terms**
- 13.1 In this document, unless the contrary intention appears:
- (a) **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.
 - (b) **Course** means Tune Out : A program to manage tinnitus, and is comprised of an education or training course, including content, associated tools and tests, designed to test whether a participant has understood, and attained the minimum requisite knowledge of, the content and subject matter of the relevant course, which may be undertaken and completed online via access to the Platform, which is offered by Tinnitus Services and is available to you on the Platform, upon the payment and receipt of the Fee from time to time.
 - (c) **Device** means your own internet-enabled device that is compatible with the Website and has a current and working internet connection.
 - (d) **Intellectual Property Rights** means all intellectual property rights, including the following rights:
 - (i) patents, copyright, rights in circuit layouts, registered and unregistered designs, moral rights, registered and unregistered trade marks, service marks, trade names and any right to have confidential information kept confidential; and

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- (ii) any application or right to apply for registration of any of the rights referred to in paragraph (i).
- (e) **Non-excludable Obligations** has the meaning set out in clause 11.2.
- (f) **Platform** means the software for Tinnitus Services' compliance management system hosted by or on behalf of Tinnitus Services, which may be accessed by you via the internet.
- (g) **Privacy Policy** means Tinnitus Services' Privacy Policy available at www.tuneout.com.au, as amended from time to time by Tinnitus Services.
- (h) **Fees** in respect of the Course, means the fee, specified on the Website, payable by you for the right to access and use the Course.
- 14.8 **Dispute resolution:** If you have any issue or dispute arising out of these Terms or in relation to the Website or our services or products, you must notify us in writing and use reasonable endeavours to attempt to resolve the matter through discussions or correspondence with us before commencing any court or tribunal proceedings.
- 14.9 **Notices:** Any notices given by either party to the other party in connection with these Terms, the Website or the Course must be in writing, in English and signed by the sender (or a person who is a duly authorised representative of the sender). Notices to us must be delivered to us by email to info@tuneout.com.au
- 14.10 **Contact details:** It is your responsibility to ensure that you enter your email address and other contact details correctly when you contact us or submit a client intake form or order any of our services or products. Failure to do so may result in loss or incorrect delivery of our communications, services or products to you.
14. **Interpretation**
- 14.1 **No waiver:** We do not waive a right, power or remedy in connection with these Terms if we fail to exercise or delay in exercising that right, power or remedy. If the same or similar rights, powers or remedies arise on different occasions, we are not obliged to exercise those rights, powers or remedies in the same way. A waiver of a right, power or remedy must be in writing and signed by us to be effective.
- 14.2 **Governing law and jurisdiction:** These Terms are governed by the laws of New South Wales, Australia. You submit to the exclusive jurisdiction of the courts of New South Wales, Australia and the courts having appeal from them.
- 14.3 **Severability:** If any provision (or part of a provision) of these Terms is found to be void, invalid, unlawful or unenforceable, that provision (or part) is deemed to be severed from these Terms to the extent of that voidance, invalidity, unlawfulness or unenforceability without invalidating the remaining provisions. The remaining provisions of these Terms will remain in full force and effect and constitute a binding agreement between you and us.
- 14.4 **Relationship between the parties:** Nothing in these Terms constitutes or creates any relationship between the parties as partners, joint venturers or principle and agent or gives rise to any other form of fiduciary relationship between the parties.
- 14.5 **Entire agreement:** These Terms, together with the Privacy Policy and any other additional terms which may apply to particular activities when using the Website, constitutes the entire agreement between the parties about its subject matter and supersedes all previous understandings, agreements, representations and warranties between the parties in relation to that subject matter.
- 14.6 **Force majeure:** To the extent permitted by law, we will not be liable to you for any failure to fulfil, or delay in fulfilling, our obligations caused by any circumstances outside of our reasonable control.
- 14.7 **Feedback and complaints:** We appreciate your feedback, whether complaints, compliments, queries or suggestions. If you have a question, issue, complaint or any other feedback about our Website or our services or products, please inform us through any of the means on the 'Contact Us' section of our Website.
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