

Carecom Terms and Conditions

TUNSTALL HEALTHCARE (UK) LTD

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in the Agreement and any Service Line.

Agreement: the agreement between Tunstall and the Customer arising from Tunstall's acceptance of an order made by the Customer for the supply of the Carecom System and associated Services and which incorporates these terms and conditions.

Carecom Software: Tunstall's Carecom software suite.

Carecom System: the Carecom Software, the Equipment, the Material and the Documentation.

Charges: the charges payable under this agreement for the the Carecom System and associated Services as set out in the relevant Service Line or Service Lines (as the case may be) or the schedule of charges provided by Tunstall to the Customer at the commencement of the Agreement as amended from time to time in accordance with these terms and conditions.

Control: as defined in section 1124 of the Corporation Tax Act 2010.

Customer: the purchaser of Services from Tunstall who has entered into the Agreement.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Deliverables: any Documentation, software, know-how or other works created or supplied by Tunstall (whether alone or jointly) in the course of providing the Services.

Dispute Resolution Procedure: the procedure described in condition 15.6.

Documentation: the documents provided by Tunstall for the Deliverables, in either printed text or machine-readable form, including any technical documentation, program specifications and operations manuals.

Effective Date: the date of the Agreement.

Equipment: means any hardware comprised within the Carecom System installed by Tunstall under the Agreement.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence: the licence set out in condition 5 for the use of the Carecom Software.

Material: means any materials, goods, products, equipment, systems, software, programs or processes, in whatever form, used by Tunstall to provide the Services or supplied by Tunstall to the Client in the performance of the Service and which will continue to belong to Tunstall, but does not include the Equipment or software or programs determined by Tunstall from time to time (in its sole discretion) as being part of the Carecom Software.

Personal Data: has the definition set out in the Data Protection Legislation

Service Line: a document which sets out a description of services to be provided by Tunstall to the Customer and any other relevant matters relating to delivery of the Services.

Services: the services described in any Service Line.

Service Change: shall have the meaning described in condition 4

Standard Support Hours: 9.00 am to 5.00 pm UK time, Monday to Friday, except on days which are bank holidays in England.

Tunstall: Tunstall Healthcare (UK) Limited (registered number: 01332249) whose registered office is at Whitley Lodge, Whitley Bridge, Yorkshire DN14 0HR.

- 1.2 The headings in these terms and conditions or any Service Line do not affect their interpretation. Except where the context otherwise requires, references to conditions are to conditions of these terms and conditions or any Service Line (as the case may be).
- 1.3 Unless the context otherwise requires:
 - (a) references to the Customer and Tunstall include their permitted successors and assigns;
 - (b) references to statutory provisions include those statutory provisions as amended or re-enacted;
 - (c) references to one gender includes a reference to the other genders; and
 - (d) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.4 If any conflict arises between these terms and conditions and any provision of any Service Line, these terms and conditions shall prevail.
- 1.5 Words in the singular include the plural and those in the plural include the singular.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.7 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England

and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

2. THE SERVICES

- 2.1 Tunstall shall supply to, and the Customer shall take and pay for, the Carecom System and the Services on these terms and conditions.
- 2.2 The Services shall be provided during the hours set out in the relevant Service Line or, if none are so set out, during Standard Support Hours.
- 2.3 Tunstall may make any changes to the Carecom System and/or the Services (as the case may be) as are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Carecom System or the Services, and Tunstall shall notify the Customer in any such event.
- 2.4 Tunstall will supply those parts and materials detailed in the applicable Service Line necessary for the provision of the Services.
- 2.5 Tunstall may (at its absolute discretion) withhold the Services or make a charge at its prevailing fee rates where any payment is overdue at a time when performance of the Services is required.

3. WARRANTIES

- 3.1 Tunstall warrants that:
 - (a) the Services will be provided using reasonable care and skill. Notwithstanding any provision to the contrary, any dates, periods or times specified in the Agreement or a Service Line are estimates only and time shall not be of the essence for the performance of Tunstall's obligations.
 - (b) any parts and materials supplied by Tunstall in the performance of the Services shall be of satisfactory quality and remain free of defects for a period of 12 months following supply.
- 3.2 Tunstall warrants to the Customer that each item of Equipment (but not any SIM Card supplied with it) will be free from defects of workmanship and materials and will remain so for a period of 12 months from the date of the date of delivery of the Equipment to the Customer ("the Warranty Period") and that it will at its option repair, replace or refund the purchase price of any such defective Equipment (other than consumable items).
- 3.3 Tunstall shall not in any circumstances be liable for a breach of the warranty contained in condition 3.2:
 - (a) unless the Customer gives written notice of the defect to Tunstall within seven days of the time when the Customer discovers or ought reasonably to have discovered the defect;
 - (b) unless after receiving the notice, the Customer (if asked to do so by Tunstall):
 - (i) In the case of the controller upon which the Carecom Software is loaded, provides Tunstall with reasonable access to inspect and (if necessary) remove such controller; and

- (ii) In the case of all other Equipment, returns the relevant item of Equipment to Tunstall's place of business for examination;
- (c) where the defect arises because the Customer failed to follow Tunstall's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the relevant Equipment or (if there are none) good trade practice;
- (d) where the Customer has altered or repaired the relevant Equipment without the written consent of Tunstall;
- (e) where the Equipment has been used in conjunction with any equipment or materials manufactured or supplied to the Customer by a third party other than Tunstall which have not been approved by Tunstall from time to time for connection to the Equipment; or
- (f) where the Equipment has been used improperly or outside of its normal application.

3.4 Tunstall:

- (a) does not warrant that the Customer's use of the Carecom System will be uninterrupted or error-free or that the Carecom System, the Services, the Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that its use of the Carecom System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3.5 Tunstall warrants that the Carecom Software will conform in all material respects to its specification for a period of 90 days from the date of the Licence (**Software Warranty Period**). If, within the Software Warranty Period, the Customer notifies Tunstall in writing of any defect or fault in the Carecom Software in consequence of which it fails to conform in all material respects to its specification, and the defect or fault does not result from the Customer, or anyone acting on its behalf, having used the Carecom Software outside the terms of the Licence, Tunstall shall, at its sole option, do one of the following:

- (a) repair the Carecom Software; or
- (b) replace the Carecom Software;

provided the Customer provides all the information that may be necessary to assist Tunstall in resolving the defect or fault or sufficient information to enable Tunstall to re-create the defect or fault.

3.6 The Customer accepts responsibility for the selection of the Carecom System to achieve its intended results and acknowledges that the Carecom System and Carecom Software has not been developed to meet the individual requirements of the Customer.

- 3.7 Where an item of Equipment is repaired or replaced by Tunstall any such repaired or replacement Equipment shall remain under warranty for any unexpired portion of the Warranty Period.
- 3.8 The Customer's remedies in respect of any claim under the express warranties given in this condition 3 or any condition or warranty implied by law or any other claim in respect of the Carecom System or any workmanship in relation to it (whether or not involving negligence on the part of Tunstall) shall, in all cases, be limited to the express remedies described in this condition 3. All warranties, conditions and other terms implied by statute or common law are excluded from these terms and conditions to the fullest extent permitted by law.
- 3.9 The Customer shall not be entitled to rely on any oral statement or representation made by Tunstall or by Tunstall's employees, agents or servants and the Customer acknowledges that it will only rely on written data and specifications supplied by Tunstall.
- 3.10 All batteries supplied with the Equipment are excluded from the warranty detailed in condition 3.2.
- 4. SERVICE CHANGES**
- 4.1 For the purposes of the Agreement a **Service Change** is a request to change (including to cease) any Service Line or add a new Service Line.
- 4.2 Service Changes may be originated by the Customer issuing such request in writing to Tunstall. On receipt of a Service Change, Tunstall shall provide the Customer, within 14 days of receiving the Service Change, details of the impact which the proposal will have upon the Services provided to the Customer, any systems or operations of Tunstall or the Customer which communicate with, or are otherwise affected by, the Services, the Charges and these terms and conditions.
- 4.3 Save where otherwise stated herein, Tunstall shall not be obliged to agree a Service Change, provided that if Services are being provided to the Customer under an existing Service Line, the Customer may require the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.
- 4.4 Tunstall and the Customer shall discuss any Service Change and such discussion shall result in either:
- (a) The Customer issuing its agreement in writing that:
 - (i) Tunstall shall commence the provision of the Services described in the relevant Service Line;
 - (ii) Tunstall shall cease the provision of the Services described in the relevant Service Line
 - (iii) The Services provided to the Customer shall be amended in the manner agreed; or
 - (b) An agreement that the Service Change will not proceed.
- 4.5 Once the Customer has given its written agreement in accordance with condition 4.4(a), the change in the Services shall be effective from a date agreed between the parties or, in default of agreement, as may be reasonably specified by Tunstall and Tunstall and the Customer shall perform their respective obligations in accordance with these terms and conditions and the relevant Service Line.

5. LICENCE

5.1 Tunstall grants to the Customer a non-exclusive licence for the term of the Agreement to use the Carecom Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer.

5.2 In relation to scope of use:

- (a) the Customer may not use the Carecom Software other than as specified in condition 5.1 without the prior written consent of Tunstall, and the Customer acknowledges that additional fees may be payable on any change of use approved by Tunstall; and
- (b) except as expressly stated in these terms and conditions and other than required by law, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Carecom Software.

5.3 The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (b) allow the Carecom Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under the Licence, without the prior written consent of Tunstall, such consent not to be unreasonably withheld or delayed.

5.4 The Customer shall:

- (a) other than where the Customer has purchased an unlimited licence from Tunstall, ensure that the number of persons using the Carecom Software does not exceed the number of individual licences purchased;
- (b) ensure that the Carecom Software remains installed on designated equipment only; and
- (c) notify Tunstall as soon as it becomes aware of any unauthorised use of the Carecom Software by any person;

5.5 The Customer shall permit Tunstall to inspect and have access to any premises (and to the computer equipment located there) at or on which the Carecom Software is being kept or used, and have access to any records kept in connection with the Licence, for the purposes of ensuring that the Customer is complying with the terms of the Licence, provided that Tunstall provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

6. CHARGES

6.1 The Customer shall pay the charges for the supply of the Carecom System and the performance of the Services. They may be varied in accordance with condition 4.2.

6.2 Charges may be increased no more than once in any 12 month period by Tunstall giving the Customer written notice of any such increase 3 months before the proposed date of increase.

- 6.3 Charges shall be paid by the Customer within 30 days of the date of Tunstall's invoice for such charges.
- 6.4 VAT shall be added to the all charges at the prevailing rate.
- 6.5 Without limiting any other right or remedy of Tunstall, if the Customer fails to make any payment due to Tunstall under the Agreement by the due date for payment, Tunstall:
 - (a) may disapply any discounts applied to the Charges; and
 - (b) shall have the right to charge interest on the overdue amount at the rate of 3% per annum above the current base rate of the National Westminster Bank plc accruing on a daily basis from the due date for payment of the overdue amount, whether before or after judgement and compounding quarterly.
- 6.6 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set off or counterclaim against Tunstall in order to justify withholding payment of any such amount in whole or in part.

7. OBLIGATIONS OF THE CUSTOMER

The Customer agrees with Tunstall to:

- 7.1 provide to Tunstall at all reasonable times and at no charge to Tunstall access to any data, information, equipment and/or premises required by Tunstall in order to perform the Services and which is not under the direct control of Tunstall. Such access shall include access to parking facilities (at no charge to Tunstall) during the performance of the Services. For the avoidance of doubt, the right of access shall include the right for Tunstall to enter any such premises where Material is stored or installed to recover it on termination of the Agreement or any Service Line (as applicable);
- 7.2 except as may be allowed by law, not (and not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, or make error connects to all or any of the software comprised in the Material in whole or in part;
- 7.3 keep and maintain all Material, documents, information and other property of Tunstall supplied as part of the Services in safe custody at its own risk, maintain them in good condition, not divulge them or allow them to be divulged to any person (except as may be required by law) and not dispose or use them other than in accordance with Tunstall's written instructions;
- 7.4 not remove, deface or obscure any identifying mark or packaging on or relating to any Material
- 7.5 not assign or transfer any of its rights, benefits or obligations under the agreement or any Service Line without the prior written consent of Tunstall;
- 7.6 where the Equipment supplied to the Customer includes smart door-locking devices, ensure that the power supply to such devices is disabled on the activation of any fire alarm in the premises where such devices are being used; and
- 7.7 comply with such additional obligations as may be described in the Service Line relevant to the supply of the Services.

8. TITLE AND RISK

- 8.1 The Materials provided to the Customer by Tunstall pursuant to a Service Line or these terms and conditions shall at all times remain the property of Tunstall, and the Customer shall have no right, title or interest in or to those Materials (other than the right to possession and use of them subject to these terms and conditions or the relevant Service Line)
- 8.2 The risk of loss, theft, damage or destruction of the Materials shall pass to the Customer on delivery and remain with the Customer during the term of the Agreement or the relevant Service Line (as the case may be).
- 8.3 When the Customer wishes to order additional Equipment it shall do so in writing addressed to Tunstall. Each order shall be a separate offer by the Customer to buy such Equipment on these terms and conditions, which Tunstall shall be free to accept or decline at its absolute discretion. An order shall not be binding unless and until accepted by Tunstall in writing.
- 8.4 No order which has been accepted by Tunstall may be cancelled by the Customer without Tunstall's agreement in writing. If Tunstall agrees to the Customer cancelling an order, the Customer will indemnify Tunstall against all losses (which may include the profits that Tunstall would have made from the order had it not been cancelled) suffered by Tunstall arising out of such cancellation.
- 8.5 All specifications, illustrations, colours, drawings and diagrams in Tunstall's catalogues, trade literature and other published matter are of a generally informative nature and are approximate only and none of them form part of the Agreement or give rise to any independent or collateral liability of any nature whatsoever on the part of Tunstall and Tunstall shall be under no liability whatsoever for inaccuracies, changes or alterations in dimensions or measurements given, quoted or made by it.
- 8.6 Subject to condition 8.5, title to the Equipment shall pass to the Customer only when Tunstall receive payment in full for that Equipment. Until title in Equipment in the possession of the Customer has passed to it, the Customer shall ensure that the Equipment is kept in satisfactory conditions and readily identified as Tunstall's property.
- 8.7 Notwithstanding the provisions of condition 8.7, the Customer shall be entitled to connect Equipment in its possession to the Carecom System in accordance with the terms contained in the Agreement;
- 8.8 The Customer's right to possession of any Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 13.2 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Tunstall on the due date. Where such circumstances arise, Tunstall may (without prejudice to any part of its other rights) recover or resell the relevant Equipment or any of it and the Customer grants Tunstall, its agents and employees an irrevocable licence to enter any premises where such Equipment is or may be stored in order to remove it. All costs incurred by Tunstall in repossessing such Equipment shall be borne by the Customer.
- 8.9 Tunstall may maintain any action for the price of any Equipment whether or not ownership in it has passed to the Customer.

- 8.10 For the avoidance of doubt, intellectual property in the firmware contained within the Equipment shall remain within the ownership of Tunstall or its suppliers. Tunstall grants to the Customer a non-exclusive, irrevocable, royalty free licence to use any elements of such firmware.
- 8.11 Risk in the Equipment shall pass to the Customer on completion of delivery. For this purpose, delivery is completed:
- (a) where delivery is performed by Tunstall, once the Equipment has been unloaded at the Customer's place of business or such other delivery address agreed between the Customer and Tunstall; or
 - (b) where the Equipment is collected by the Customer or a carrier organised by the Customer, when the Equipment is physically passed between Tunstall and the Customer or the organised carrier (as the case may be)
- and the risk of damage to or loss of the Equipment will pass to the Customer at that time.
- 8.12 Tunstall shall be under no obligation to effect insurance of the Equipment once risk has passed to the Customer.
- 8.13 On termination, Tunstall's rights contained in this condition 8 shall remain in effect.
- 8.14 Additional Equipment ordered pursuant to condition 8.3 will be delivered at the agreed time to the agreed point of delivery
- 8.15 Tunstall may at its discretion deliver the Equipment by instalments in such quantities as it thinks fit. Where delivery is made by instalments, each instalment shall be construed as a separate contract to which all the provisions of these terms and conditions shall (with any necessary alterations) apply. Where delivery is performed by Tunstall, Tunstall shall unload the Equipment at the Customer's risk.
- 8.16 The Customer shall have no claim whatsoever against Tunstall for any direct or indirect or consequential loss or damage of any kind (including, for the avoidance of doubt, loss of profit, loss of reputation and all interest, penalties and legal costs) arising from any failure to make delivery or any delay in delivery of additional Equipment ordered pursuant to condition 8.4.
- 8.17 Without prejudice to any other rights of Tunstall under these terms and conditions, if the Customer fails to give all instructions reasonably required by Tunstall, or fails to provide all necessary documents, licences, consents and authorities for delivery of the additional Equipment ordered pursuant to condition 8.4 or otherwise causes or requests delay, Tunstall may charge the Customer for all reasonable storage and other costs of whatever nature incurred or arising from such delay.
- 8.18 Where the Equipment is delivered in a damaged state or there is any shortfall in numbers delivered the Customer shall notify Tunstall in writing within seven days of delivery.
- 8.19 Where the quantity of the Equipment delivered is less than that stated in any applicable contract the Customer shall not have any right to reject such Equipment and shall have no right to claim for damages for breach of contract arising from such under delivery. In such circumstances, the Customer will only be obliged to pay at the appropriate contract price for the quantity of Equipment delivered.

8.20 Each sub-condition of this condition 8 is separate, severable and distinct. If any of them are for any reason unenforceable, the others shall remain in full force and effect.

9. DATA PROTECTION

9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Tunstall is the Data Processor (where **data controller** and **data processor** have the meanings as defined in the Data Protection Legislation).

9.3 Without prejudice to the generality of condition 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to Tunstall for the duration and purposes of the provision of the Services.

9.4 Without prejudice to the generality of condition 9.1, Tunstall shall, in relation to any Personal Data processed in connection with the performance by Tunstall of its obligations under the Agreement:

- (a) process that Personal Data only on the written instructions of the Customer unless Tunstall is required by the laws of any member of the European Union or by the laws of the European Union applicable to Tunstall to process Personal Data (**Applicable Law**);
- (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or Tunstall has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) Tunstall complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- (iv) Tunstall complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the provision of the Services unless required by applicable law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this condition 9.
- 9.5 The Customer consents to Tunstall appointing a third-party processor of Personal Data under any Service Line. Tunstall confirms that it will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this condition 9.
- 9.6 Tunstall shall have no liability to deliver the Services in respect of any data transmitted or processed in connection with the Services which is lost or sufficiently degraded as to be unusable.

10. INTELLECTUAL PROPERTY

- 10.1 The Material shall remain within the ownership of Tunstall. Tunstall grants to the Customer a non-exclusive, irrevocable, royalty free licence to use any elements of the Material during the term of the Agreement.
- 10.2 In respect of Material specifically created for the Customer as part of the Services, Tunstall retains full ownership of such Material and any and all of the copyright, other intellectual property rights and any other data or material used or subsisting in the Material whether finished or unfinished.
- 10.3 If any third party Intellectual Property Rights are used in the provision of the Services, Tunstall shall ensure that it has secured all necessary consents and approvals to use such third party Intellectual Property Rights for itself and the Customer.
- 10.4 The Customer acknowledges the right of Tunstall to the return or recovery of the Material on termination of the relevant Service Line to which such Material relates or the Agreement (as the case may be) and shall perform such acts or provide such assistance as Tunstall may reasonably require to facilitate such return or recovery.
- 10.5 All Material supplied by Tunstall to the Customer shall, at all times, be and remain as between Tunstall and the Customer the exclusive property of Tunstall, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Tunstall, and shall not be disposed of or used other than in accordance with Tunstall's written instructions or authorisation.

- 10.6 The Customer shall defend, indemnify and hold harmless Tunstall against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Carecom System and/or the Services, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) Tunstall provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 10.7 Tunstall shall defend, indemnify and hold harmless the Customer, claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any claim that the Carecom System or the Services infringe any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) Tunstall is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to Tunstall in the defence and settlement of such claim, at Tunstall's expense; and
 - (c) Tunstall is given sole authority to defend or settle the claim.
- 10.8 In the defence or settlement of any claim, Tunstall may procure the right for the Customer to continue using the Carecom System, replace or modify the Carecom System so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.9 In no event shall Tunstall, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than Tunstall; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Tunstall; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Tunstall or any appropriate authority.
- 10.10 The foregoing states the Customer's sole and exclusive rights and remedies, and Tunstall's (including Tunstall's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 10.11 Where the Material comprises the mobile telephone application supplied by Tunstall to the Customer (**the App**) to enable the use of the Carecom System by the Customer's employees, the following terms and conditions shall apply.
- 10.12 The App requires a device with a minimum amount of memory and the operating system notified by Tunstall to the Customer from time to time. The Customer shall ensure that the App is downloaded only to devices that fulfil such operating system requirements.

- 10.13 The Customer shall not and shall ensure that its employees using the App do not:
- (a) transfer or seek to transfer the App to anyone else
 - (b) transfer, rent, lease, sub-license, loan, provide, or otherwise make available, the App or the Services in any form, in whole or in part to any person without prior written consent from Tunstall;
 - (c) copy the App except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
 - (d) translate, merge, adapt, vary, alter or modify, the whole or any part of the App, nor permit the App to be combined with, or become incorporated in, any other programs, except as necessary to use the App and the Services on devices as permitted in these terms;
 - (e) disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the App except to the extent permitted by law;
 - (f) use the App in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms and conditions, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the App or the Carecom System;
 - (g) infringe Tunstall's intellectual property rights or those of any third party in relation to the Customer's use of the App (to the extent that such use is not licensed by these terms);
 - (h) transmit any material that is defamatory, offensive or otherwise objectionable in relation to the Customer's use of the App;
 - (i) use the App in a way that could damage, disable, overburden, impair or compromise Tunstall's systems or security or interfere with other users; and
 - (j) collect or harvest any information or data from Tunstall's systems or attempt to decipher any transmissions to or from such systems
- 10.14 From time to time Tunstall may automatically update the App to improve performance, enhance functionality, reflect changes to the operating system or address security issues or may ask the Customer to update the App for these reasons. The Customer acknowledges that if it chooses not to install such updates or if it opts out of automatic updates it may not be able to continue using the App.

11. LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 11

- 11.1 Tunstall shall not be liable for any loss or damage to the Customer arising by reason of the Carecom System or the Services (or any part) being temporarily unavailable as a result of any cause whatsoever and shall not be responsible in any circumstances for any indirect or consequential loss or damage however arising (including but not limited to loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of use or loss or corruption of data or information) which the Customer may sustain in connection with the services.

- 11.2 Nothing in these conditions excludes or limits the liability of Tunstall for death or personal injury caused by Tunstall's negligence, or for fraud or any other matter for which it would be unlawful for Tunstall to exclude or attempt to exclude its liability.
- 11.3 All warranties conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement and any Service Line.
- 11.4 If Tunstall's performance of its obligations under the Agreement or any Service Line is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation, Tunstall shall not be liable for any costs charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention, delay or failure and, without limiting its other rights or remedies, Tunstall shall have the right to suspend performance of the relevant Service until the prevention delay or failure has been remedied and to rely on such prevention delay or failure to relieve it from the performance of any of its obligations so affected.
- 11.5 Tunstall shall not be liable for:
- (a) any indirect or consequential loss arising from the non-performance of the Carecom System and/or the Services including (for the avoidance of doubt) loss of profits, loss of business, loss of anticipated savings, loss of goods, loss of contract, loss of use or loss or corruption of data or information; or
 - (b) any loss or damage to the Customer arising from the non-performance or limited performance of the App resulting from the mobile telephone or other device upon which the App is installed having other mobile applications installed upon it which materially adversely affect the performance of the App or if such mobile telephone or other device is not properly charged by the Customer. In such circumstances and where such mobile telephone or other device has been supplied by Tunstall Tunstall may require the Customer to return such mobile telephone or other device to it and Tunstall may reformat the said device to improve its performance and the Customer shall promptly comply with such request.
- 11.6 Without prejudice to condition 11.2, Tunstall's total liability arising under or in connection with the Agreement and all Service Lines in any one year shall be limited to one hundred and twenty five per cent (125%) of the total charges paid and/or payable by the Customer under the Agreement and all Service Lines in such year, provided that Tunstall's liability to the Customer in respect of all loss or damage arising under or in connection with the supply to the Customer of Equipment manufactured by a third party, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, shall be limited to the extent of any limitation within the terms of the agreement between Tunstall and the third party provider for the supply of such Equipment.

12. DURATION OF THIS AGREEMENT

- 12.1 The Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with condition 13, until either party gives to the other party 90 days' written notice to terminate, expiring no earlier than the fifth anniversary of the Effective Date.

13. TERMINATION

- 13.1 Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement or any Service Line which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 working days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under this agreement has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, Tunstall may terminate the Agreement or the relevant Service Line with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
 - (b) there is a change of Control of the Customer.
- 13.3 On termination of the Agreement or any Service Line for whatever reason:
- (a) the Customer shall immediately pay to Tunstall all of Tunstall's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Tunstall may submit an invoice, which shall be payable immediately on receipt;
 - (b) Termination of the Agreement or any Service Line shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Agreement or any Service Line (as the case may be) which existed at or before the date of termination;
 - (c) the Customer shall, within a reasonable time, return all of the Material and Deliverables. If the Customer fails to do so, then Tunstall may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - (d) Any provision of this agreement or any Service Line that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. CONFIDENTIALITY

- 14.1 The Customer undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Tunstall, its employees, agents, consultants or subcontractors or of any member of the group of companies to which Tunstall belongs and any other confidential information concerning Tunstall's business or its products which the Customer may obtain, except as permitted by condition 14.2.
- 14.2 The Customer may disclose Tunstall's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement or any Service Line. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 14; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 The Customer shall not use Tunstall's confidential information for any purpose other than to perform its obligations under the Agreement or any Service Line.

15. GENERAL

- 15.1 No variation of any of the provisions of the Agreement or any Service Line shall be binding upon Tunstall unless it is in writing and signed on behalf of Tunstall.
- 15.2 No time or other indulgence extended to the Customer shall prejudice or amount to a waiver of any rights or remedies, which may be or become available to Tunstall under the Agreement or any Service Line.
- 15.3 A waiver of any right under the Agreement or any Service Line is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or failure.
- 15.4 If a court or any other competent authority finds that any provision of the Agreement or any Service Line (or part of any provision) is invalid, illegal or unenforceable, that provision shall to the extent required, be deemed deleted and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 15.5 The Agreement and the documents referred to in it (including (for the avoidance of doubt) these terms and conditions) constitute the entire agreement between Tunstall and the Customer. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Tunstall which is not set out in the Agreement or a Service Line.
- 15.6 If any dispute arises in connection with the Agreement or any Service Line, directors or other senior representatives of the parties with authority to settle the dispute will, within fourteen days of a written request from one party to the other, meet in a good faith effort to resolve the dispute. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model

Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

- 15.7 Tunstall may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement or any Service Line. The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement or any Service Line without Tunstall's prior written consent.
- 15.8 Any notice or other communication given to a party under or in connection with the Agreement or any Service Line shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.
- 15.9 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 15.8; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.
- 15.10 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
- 15.11 No one other than a party to the Agreement shall have any right to enforce any of its terms.
- 15.12 References in these terms and conditions or any Service Line to a party shall be deemed to include the agents, subcontractors, consultants and employees of that party
- 15.13 Nothing in the Agreement or any Service Line is intended to or shall be deemed to constitute either party the agent of the other or authorise any party to make or enter into any commitments for or on behalf of the other party.

16. FORCE MAJEURE

- 16.1 Tunstall shall not be liable for any failure or delay in providing the Service, or parts or components for Equipment where such failure or delay is by reason of acts of God, (including but not limited to fire, flood, earthquake, storm or other natural disaster), war, civil disturbance, strike or other labour dispute, material shortage, law, act or order of any government, or agency thereof, or any other cause or circumstances beyond Tunstall's reasonable control.

17. LAW

- 17.1 The Agreement, the Service Lines and any non-contractual disputes or claims arising out of the Agreement or the Service Lines shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.