

GO Trial Terms & Conditions (Response Customers)

TUNSTALL HEALTHCARE (UK) LTD

1. DEFINITIONS

- 1.1 The definitions and rules of interpretation in this condition apply in the Agreement and these terms and conditions.

Agreement: the agreement between Tunstall and the Recipient arising from Tunstall's acceptance of a trial request made by the Recipient to evaluate the Device and which incorporates these terms and conditions;

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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);

Device: Tunstall's GO alarm device and any peripheral devices supplied with it by Tunstall to the Recipient;

Evaluation Period: the period of 1 calendar month commencing on the date of delivery of the Device to the Recipient;

Evaluation Services: the services described in condition 2.2 that are required to enable the Recipient to perform the Objective;

Information: information owned by Tunstall and obtained by the Recipient relating to the Device;

Objective: evaluation of the Device and Tunstall's services relating to the monitoring of the use of the Device by the Recipient for use in the Recipient's business;

Personal Data: has the meaning given in the Data Protection Legislation;

Recipient: a licensee from Tunstall who has entered into the Agreement following Tunstall's acceptance of that person's trial request;

Software: the software programs incorporated into the Device or used to provide services relating to the use of the Device;

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

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. LICENCE

- 2.1 Tunstall hereby grants the Recipient a personal, non-transferable, non-exclusive licence to use the Device and the Software during the Evaluation Period solely for the purposes of the Objective.

- 2.2 In order to enable the Recipient to perform the Objective, Tunstall shall provide the following services (**Evaluation Services**):

- (a) liaison with the Recipient to gather the required information (including IP addresses, Port Numbers, or telephone numbers to enable calls to be accepted by Tunstall's monitoring service from the GO device);
- (b) configuration of third party links to Tunstall's monitoring platform; and
- (c) end to end testing of the GO device supplied to the Recipient for the Objective.

2.3 The Recipient shall provide to Tunstall at all reasonable times and at no charge to Tunstall access to any data, information, equipment, systems and/or premises required by Tunstall in order to perform the Evaluation 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 Evaluation Services. For the avoidance of doubt, the right of access shall include the right for Tunstall to enter any such premises and have access to any such systems or equipment in order to decommission the Recipient's use of the Device on termination of this licence not followed by the purchase of the Device by the Recipient.

2.4 In performing the Objective, the Recipient shall comply with such acceptable usage policies as may be notified to it by Tunstall and shall not access, store, distribute or transmit:

- (a) any thing or device (including any software, code, file or programme) which may:
 - (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
 - (ii) adversely affect the user experience,
 - (iii) including worms, trojan horses, viruses and other similar things or devices; or
- (b) any material during the course of its use of the Services that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images;
 - (iv) promotes unlawful violence;
 - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (vi) in a manner that is otherwise illegal or causes damage or injury to any person or property.

2.5 The Recipient may not make any back-up or archival copies of the Software and not disassemble, de-compile, reverse engineer or create derivative works based on the Device and/or the Software without prior written agreement from Tunstall or except as may be otherwise allowed by law.

2.6 During the Evaluation Period this licence may be terminated immediately by Tunstall giving written notice if the Recipient is in breach of any of its obligations under these terms and conditions. The licence may be terminated by the Recipient during the Evaluation Period upon seven days' written notice or upon the Recipient entering into an agreement with Tunstall for the purchase of the Device.

Upon termination not followed by the purchase of the Device by the Recipient, the Recipient shall within two working days:

- (a) return to Tunstall the Device and any documents containing any item of the Information and shall completely delete all electronic copies of all or any part of the Information; and
- (b) provide Tunstall with the access referred to in condition 2.3 in order to de-commission the Recipient's use of the Device.

2.7 Save for death and personal injury caused by Tunstall's negligence, Tunstall shall have no liability of any kind in any circumstances whatever to the Recipient in respect of the Device, the Software, the Evaluation Services or Information. In particular, Tunstall shall have no liability in any circumstances whatever for any data loss or corruption and the Recipient agrees that it has sole responsibility for protecting its data during the performance of the Objective.

2.8 No representations, conditions, warranties or other terms of any kind are given in respect of Device, the Software, the Evaluation Services or the Information, and all statutory warranties and conditions are excluded to the fullest extent possible.

2.9 If the Recipient wishes to continue to use the Device beyond the end of the Evaluation Period or following earlier termination of the evaluation it may only do so if it has placed an order with Tunstall for the supply of the Device and associated services and Tunstall has provided written confirmation that it has accepted that order. Otherwise the Recipient's licence to use the Device shall terminate and it shall deliver the Device to Tunstall and provide Tunstall with access to de-commission the Recipient's use of the Device, Software and any services.

3. NON-DISCLOSURE AGREEMENT

3.1 In consideration of the disclosure by Tunstall to the Recipient of the Device, the Software, the Evaluation Services and the Information for the purpose of the Objective, the Recipient undertakes that it will respect and preserve the confidentiality of the Information for a period of ten years after the date of such disclosure (subject to condition 3.3 below). The Recipient shall not without the prior written consent of Tunstall:

- (a) communicate or otherwise make available the Information to any third party; or
- (b) use the Information itself for any commercial, industrial or other purpose other than the Objective; or
- (c) copy, adapt, or otherwise reproduce the Information save as strictly necessary for the purposes of the Objective.

3.2 The Recipient may disclose the Device, the Software and Information or any part thereof, with the prior consent of Tunstall, to any employee or end user of the Recipient who needs access to it in connection with the Objective. In such an event the Recipient agrees to ensure, before such disclosure, that the employee or end-user (as the case may be) in question is made aware of the proprietary and confidential nature of the Device, the Software and Information and understands that he/she is bound by conditions of secrecy no less strict than those set out here. The Recipient agrees to monitor the use of the Device, the Software and Information by these employees and/or end-users and to enforce their obligations of confidence at the request of Tunstall.

3.3 The obligations contained in this condition 3 shall not apply, or shall cease to apply, to such part of the Information as the Recipient can show to the reasonable satisfaction of Tunstall:

- (a) has become public knowledge other than through the fault of the Recipient or an employee or director of the Recipient to whom it has been disclosed in accordance with condition 3.2 above; or
- (b) was already known to the Recipient prior to disclosure to it by Tunstall; or
- (c) has been received from a third party who neither acquired it in confidence from Tunstall, nor owed Tunstall a duty of confidence in respect of it.

3.4 If the Recipient decides not to purchase the Device and associated services, or otherwise at any time at the request of Tunstall, the Recipient shall return to Tunstall all copies of all or any part of the Information which have been provided to the Recipient pursuant to these terms and conditions, together with all analyses, studies and other materials produced by the Recipient which contain, or could reveal, all or any part of the Information, and any summaries (in whatever form) prepared by the Recipient of oral Information disclosed by Tunstall.

4. PROPERTY RIGHTS

4.1 Tunstall owns or has the right to licence all intellectual property rights in the Device, the Software, Information and all related documentation. The Recipient acknowledges that any delivery or disclosure pursuant to these terms and conditions shall not confer on the Recipient any intellectual property or other rights in relation to the Device, the Software or the Information other than its right to use under condition 1.

4.2 Ownership of the Device and of all complete or partial copies of the Software (if any) and related documentation shall at all times remain with Tunstall or its licensors.

4.3 If a third party notifies the Recipient of any claim that any rights in the Device or the Software or that use of the Device or the Software infringes any right of that third party, the Recipient agrees to immediately notify Tunstall and, at Tunstall's request, to immediately cease use of the Device. If Tunstall is unable to allow the Recipient to continue evaluation of the Device, the provisions of condition 2.3 shall apply.

5. DATA

5.1 If Tunstall processes any personal data on the Recipient's behalf in connection with the Objective, the parties record their intention that the Recipient shall be the data controller and Tunstall shall be a data processor and in any such case:

- (a) the Recipient acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Recipient is located in connection with the Objective and Tunstall's other obligations under these terms and conditions;
- (b) the Recipient shall ensure that the Recipient is entitled to transfer the relevant Personal Data to Tunstall so that Tunstall may lawfully use, process and transfer the Personal Data in accordance with these terms and conditions on the Recipient's behalf;
- (c) the Recipient shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (d) Tunstall shall process the Personal Data only in accordance with these terms and conditions and any lawful instructions reasonably given by the Recipient from time to time; and

- (e) each party shall
- (i) comply with all applicable requirements of the Data Protection Legislation. This condition 5.1(e)(i) is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;
 - (ii) 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);
 - (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the other party has been obtained and the following conditions are fulfilled:
 - (A) the transferring party has provided appropriate safeguards in relation to the transfer;
 - (B) the data subject has enforceable rights and effective legal remedies;
 - (C) the transferring party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (D) the transferring party complies with reasonable instructions notified to it in advance by the other party with respect to the processing of the Personal Data;
 - (v) assist the other party, at such party's cost, in responding to any request from a Data Subject (as defined in the Data Protection Legislation) 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; and
 - (vi) notify the other party without undue delay on becoming aware of a Personal Data breach
 - (vii) at the written direction of other, delete or return Personal Data and copies thereof to the other party on termination of the Term unless required by applicable law to store the Personal Data; and

(viii) maintain complete and accurate records and information to demonstrate its compliance with this condition 5.

5.2 The Recipient consents to Tunstall appointing a third-party processor of Personal Data under these terms and conditions. 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 5.

6. General

6.1 The Recipient confirms that the person signing the trial request order form on behalf of the Recipient is authorised to sign on the Recipient's behalf, and to bind the Recipient to these terms and conditions.

6.2 No variation of the Agreement or to these terms and conditions shall be effective unless it is in writing and signed by or on behalf of both parties.

6.3 Neither party may assign its rights under the Agreement or these terms and conditions without the written consent of the other.

6.4 Nothing in the Agreement or these terms and conditions creates a joint venture, partnership, contract of employment or relationship of principal and agent between the parties.

6.5 "Writing" or "written" includes e-mail except where expressly provided to the contrary.

6.6 The Agreement, these terms and conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.