

Service Line – Wellbeing Call Service

TUNSTALL RESPONSE

1. INTERPRETATION

1.1. In this Service Line the following definitions shall apply:

Application: the “Tunstall Connect” mobile application software owned by Tunstall and any updates or supplements to it

Customer: the person or firm to whom Tunstall provides the Service.

Customer Data: the data inputted into the information fields of the Software by the Customer or by Tunstall on the Customer's behalf.

Documentation: the documents made available to the Customer by Tunstall from time to time which sets out a description of the Service and the user instructions for the Service.

Equipment: the apparatus required to act as a platform for the Application to enable the receipt of the Service by a Service User comprising an Android Smart phone or tablet with Android 4.4 “KitKat” (or above) operating system or an OS Smart phone or other device operating a minimum of iOS 8 or above.

Service: the Service described in paragraph 2 and paragraph 6.1

Service User: a designated user of the Service who has the right to use Equipment upon which the Application is loaded.

Terms and Conditions of Services Supply: Tunstall’s Terms and Conditions of Services Supply that are incorporated into the agreement between Tunstall and the Customer for the supply of the Service.

Tunstall: Tunstall Healthcare (UK) Limited, trading as “Tunstall Response”.

Tunstall’s Operating Procedures: the operating procedures adopted by Tunstall from time to time for the performance of the Service.

User Subscription: a user subscription purchased by the Customer pursuant to paragraph 3.1 or 4 which entitles a Service User to access and use the Service and the Documentation and to download the Application in accordance with this Service Line.

Wellbeing Call: a telephone call described in paragraph 6.1(b).

Wellbeing Prompt: an automatic prompt made to a Service User in accordance with paragraph 6.1(a).

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

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

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

2. THE SERVICE

2.1 Tunstall shall provide a service 24 hours a day, 365(6) days a year to:

- (a) enable Service Users to indicate to Tunstall their state of wellbeing in accordance with Tunstall's Operating Procedures;
- (b) make Wellbeing Calls to Service Users in accordance with Tunstall's Operating Procedures;
- (c) provide information and assistance to Service Users in response to Wellbeing Calls; and
- (d) pass on requests for assistance made by the Service User's operation of the "Make Wellbeing Call" button comprised within the Application to a Service User's contacts in accordance with Tunstall's Operating Procedures.

- 2.2. The Application will be made available to Service Users through the Android or IOS App stores and the ways in which the Customer and its Service Users can use the Application and Documentation may also be controlled by Android or IOS App store's rules and policies which will apply in addition to the terms within this Service Line where there are differences between the two.
- 2.3. Where Tunstall are required to provide any part of the Service in a language other than English it will be necessary for Tunstall to engage a language interpretation service provider. The Customer will be charged separately for such services at the rates agreed from time to time between Tunstall and such service provider.
- 2.4. The Customer confirms that it has the approval of the relevant Service User to the disclosure by Tunstall of any information held by it about the Service User to any body or person to whom a request for assistance has been relayed and the Customer agrees to such disclosure.
- 2.5. The Service does not include connection of the Equipment to a telecommunications service. In order to use the Service, the Equipment requires connection to such a service. The Customer is wholly responsible for arranging such connection and for payment of the costs of such connection.

3. USER SUBSCRIPTIONS

- 3.1. Subject to the Customer purchasing User Subscriptions in accordance with this paragraph 3 or paragraph 4.3, the restrictions set out in this paragraph 3 and the other terms and conditions of this Service Line and the Terms and Conditions of Services Supply, Tunstall hereby grants to the Customer a non-exclusive, non-transferable right to permit Service Users to download and use the Application and to receive and use the Service and the Documentation.
- 3.2. For the avoidance of doubt, a Service User shall not be entitled to download the Application or to access the Service unless the Customer has supplied Tunstall with all such data and information relating to that Service User as Tunstall shall reasonably require for the provision of the Service to such Service User.
- 3.3. For each User Subscription purchased by the Customer, Tunstall will provide a personal identification number (**PIN**) and instructions for how the Service User may download the Application. The Customer acknowledges that, other than the provision of the PIN and download instructions, Tunstall shall have no obligations to ensure that the relevant Service User has properly downloaded the Application to the Equipment.
- 3.4. In relation to the Service Users, the Customer undertakes that:

- (a) the maximum number of Service Users that will access and use the Service and the Documentation at any one time shall not exceed the number of User Subscriptions it is entitled to use from time to time;
- (b) it shall permit Tunstall to audit its use of the Services in order to establish the name and PIN of each Service User. Such audit may be conducted no more than once per quarter, at Tunstall's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
- (c) if any of the audits referred to in paragraph 3.2(b) reveal that the Customer has underpaid charges to Tunstall, then without prejudice to Tunstall's other rights, the Customer shall pay to Tunstall an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

3.5. The Customer shall ensure that neither it nor any of its Service Users accesses, stores, distributes or transmits any viruses, or any material during the course of their use of the Application or the Service that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property

and where Tunstall, acting reasonably, believes that any such thing has occurred or is reasonably likely to occur Tunstall reserves the right, without liability or prejudice to its other obligations to the Customer, to disable the Customer's access to the Service or to any material that breaches the provisions of this paragraph.

3.6. The Customer shall not and shall ensure that any of its Service Users do not and do not permit any third party to:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or

- (b) access all or any part of the Application, the Service and the Documentation in order to build a product or service which competes with the Service; or
- (c) use the Application, the Service and/or the Documentation to provide services to third parties other than as may be permitted by the terms of this Service Line without the prior written agreement of Tunstall; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Application, the Service and/or Documentation available to any third party other than as may be permitted by the terms of this Service Line without the prior written agreement of Tunstall, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Application, the Service and/or Documentation, other than as provided under this paragraph 3.

3.7. The Customer shall prevent any unauthorised access to, or use of, the Application, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Tunstall. In particular the Customer shall ensure that any PIN provided in accordance with paragraph 3.3 is kept secure by the Service User to whom it is allocated and that no PIN is allocated to more than one Service User.

3.8. The rights provided under this paragraph 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

4. ADDITIONAL USER SUBSCRIPTIONS

4.1. Subject to paragraph 4.2 and paragraph 4.3, the Customer may purchase additional User Subscriptions and Tunstall shall permit Service Users to use such additional subscriptions to access the Application, the Service and the Documentation in accordance with the provisions of this Service Line and the Terms and Conditions of Services Supply.

4.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify Tunstall in writing.

4.3. If Tunstall agrees to the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of Tunstall's invoice, pay to Tunstall the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through a year, such fees shall be pro-rated for the remainder of the relevant year.

4.4. Subject to complying with this Service Line, the Customer's Service Users may:

- (a) download or stream a copy of the Application onto Equipment belonging to or available for use by the Service User and view, use and display the Application and the Service on such a device for the purposes of receiving the Service;
- (b) use any Documentation to support the permitted use of the Application and the Service; and
- (c) receive and use any free supplementary software code or update of the Application incorporating "patches" and corrections of errors as Tunstall may provide.

4.5. The Customer shall ensure that if a Service User sells or otherwise loses the right to use the Equipment on which the Application is installed, that it will remove the Application from it.

5. CUSTOMER DATA

- 5.1. The Customer Data is and remains the property and responsibility of the Customer and the Customer is responsible for the accuracy of such data during the continuance of this Service Line including data amendments, hard copy record retention and any assessment questionnaires, which are all expressly excluded from the Service.
- 5.2. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.3. Tunstall shall follow its archiving procedures for Customer Data as set out in its Back-up Policy available at <https://uk.tunstall.com/data-backup-policy/>. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Tunstall to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Tunstall in accordance with the archiving procedure described in its Back-up Policy. Tunstall shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Tunstall to perform services related to Customer Data maintenance and back-up).
- 5.4. If Tunstall processes any personal data on the Customer's behalf when performing its obligations under this Service Line, it shall do so in accordance with the Terms and Conditions of Services Supply.

6. TUNSTALL'S RESPONSIBILITIES

- 6.1. In order to provide all Service Users with such service and facilities as it reasonably considers appropriate, Tunstall shall:
 - a) provide a service to enable each Service User to use the Application to notify Tunstall of their state of wellbeing;
 - b) where a Service User has not notified Tunstall of their state of wellbeing via the Application within any consecutive period of 24 hours ending at 9:30 am on any day, telephone the Service User and ask the standard questions detailed in Tunstall's Operating Procedures;
 - c) where a Service User indicates in a Wellbeing Call that further information or assistance is required by it, provide information to the Service User by email indicating where information or assistance may be obtained by the Service User;
 - d) where a Service User has indicated to Tunstall that it requires assistance (either during a Wellbeing Call or by activation of the "Make Wellbeing Call" button within the Application), communicate the request to the Service User's nominated contact in accordance with this Service Line and Tunstall's Operating Procedures;
 - e) where no verbal contact can be established with a Service User during a Wellbeing Call or following activation of the "Make Wellbeing Call" button within the Application, take such actions as may be set out in Tunstall's Operating Procedures;
 - f) where required in order to provide assistance to a Service User following a Wellbeing Call and subject to paragraph 6.2, use location tracking to identify the geo-location of the Service User; and
 - g) update the Service User's records held within Tunstall's systems with the outcome of each daily actions.
- 6.2. The provision of location tracking in accordance with paragraph 6.1 shall be subject to:

- a) the Service User having provided consent to the collection and processing by Tunstall of its personal data regarding its geo-location and not having withdrawn such consent;
- b) the location services functionality within the Application having been switched on by the relevant Service User; and
- c) the activation by the Service User of the “I’m OK” or “Make Wellbeing Call” button within the Application

6.3 Tunstall will assess each case following verbal contact with any Service User using the details of the Service User’s information supplied by the Customer and/or the Service User to Tunstall in accordance with the Tunstall Operating Procedures. In exercising its discretion, Tunstall shall also be entitled to take into account all the relevant information known to it.

THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THE FOLLOWING PARAGRAPHS 6.4 AND 6.5

- 6.4 Tunstall will at all times be acting on behalf of the Customer in notifying any of the Customer’s or Service User’s contacts (including any emergency service) and Tunstall as a consequence shall not be liable for any outcome howsoever arising including any delay or charges made by an emergency service or contact following any request for assistance by the Service User.
- 6.5 Tunstall’s obligations in providing the Service shall under no circumstances extend beyond the obligations described in paragraph 6.1. Tunstall shall not be liable directly or indirectly for the failure of any third party to respond appropriately when notified of the request for assistance from the Service User by Tunstall, including (for the avoidance of doubt) any delay in attendance following notification by Tunstall.
- 6.6 Subject to paragraph 6.1 (c) above, Tunstall will treat all information received by it in respect of Service User contacts and personal circumstances as confidential.
- 6.7 Tunstall will for training and audit purposes take reasonable measures to ensure that any calls made as part of the provision of the Service are voice recorded and the Customer confirms that it has the approval of each Service User to such recordings being made.

7. THE CUSTOMER’S RESPONSIBILITIES

- 7.1 The Customer shall not abuse or permit any person to abuse the Service, by making excessive use of the “Make Wellbeing Call” button without reasonable cause contrary to Tunstall’s Fair Usage Policy (as the same may be amended by Tunstall from time to time and notified to the Customer).
- 7.2 At the commencement of the Service, the Customer shall obtain all Service Users’ information and details required by Tunstall for the performance of the Service and submit them to Tunstall. During the continuance of the Service the Customer shall promptly notify Tunstall of all changes to such information. The Customer shall ensure that a Service User does not download the Application to its Equipment prior to Tunstall’s confirmation that all relevant data relating to that Service User has been received by it and is held in the Service database.
- 7.3 The Customer shall notify Tunstall of any changes to a Service User’s personal details, including but not limited to contacts, that are required to enable Tunstall to provide the Service. The Customer shall communicate any changes to the same to Tunstall as soon as practicable. **FOR THE SAKE OF CLARITY THE CUSTOMER IS SOLELY RESPONSIBLE FOR THE ACCURACY OF THE DATA USED BY TUNSTALL IN DELIVERING THE SERVICE.**

- 7.4 For the avoidance of doubt, the information and personal details to be provided to Tunstall by the Customer pursuant to paragraphs 7.2 and/or 7.3 shall not include information relating to a Service User's medical history or medical conditions (including any medicines or other treatments) and the Customer shall not supply and Tunstall shall have no requirement to retain or process any such information or details.
- 7.5 The Customer shall ensure that in respect of each Service User there are a minimum of one person and a maximum of four persons named as contacts and that those contacts are aware that they have been so named and are in agreement with their name being used for this purpose.
- 7.6 The Customer shall ensure that the Application is only downloaded and used on Equipment meeting the minimum operational requirements detailed by Tunstall from time to time being an Android Smart phone or tablet with Android 4.4 "KitKat" (or above) operating system or an OS Smart phone or other device operating a minimum of iOS 8 or above.
- 7.7 On cessation of the service howsoever arising the Customer shall ensure that the Application is decommissioned from the Equipment and the Service. Charges will continue to apply where the Application remains live despite confirmation of cessation of the Service having been provided by the Customer.
- 7.8 The Customer shall provide Tunstall with a contact number for the responsible authorised Customer representative which must be manned 24hrs per day 365(6) days per year to enable Tunstall to escalate matters outside Tunstall's responsibilities under this Agreement.
- 7.9 The Customer shall ensure that all Service Users and contacts are made aware that telephone communication with Tunstall may be voice recorded.
- 7.10. The Customer shall ensure that none of its Service Users shall:
 - (a) use the Application or the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, into the Application, the Service or any operating system;
 - (b) infringe Tunstall's intellectual property rights or those of any third party in relation to their use of the Application or the Service, including by the submission of any material (to the extent that such use is not licensed by these terms);
 - (c) transmit any material that is defamatory, offensive or otherwise objectionable in relation to its use of the Application or the Service;
 - (d) use the Application or the Service in a way that could damage, disable, overburden, impair or compromise Tunstall's systems or security or interfere with other users; and
 - (e) collect or harvest any information or data from the Service or Tunstall's systems or attempt to decipher any transmissions to or from the servers running any Tunstall service.

8 PROPRIETARY RIGHTS

- 8.1. The Customer acknowledges and agrees that Tunstall and/or its licensors own all intellectual property rights in the Service. Except as expressly stated herein, neither this Service Line or the Terms and Conditions of Services Supply grants the Customer any rights to, or in, patents, copyrights, database

rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Service or any related documentation.

- 8.2. Tunstall confirms that it has all the rights in relation to the Service that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Service Line.

9 CHARGES

- 9.1 Charge per connection: the charges separately agreed between the Customer and Tunstall or, if no such agreement is entered into, Tunstall's rates prevailing at the time.

Invoice frequency: the frequency separately agreed between the Customer and Tunstall or, if no such agreement is entered into, monthly.

- 9.2. The Customer shall be charged for all active connections to the Service. Each invoice may vary according to the number connections to the Service at the time of invoice.