

Tunstall Response Services Umbrella Terms



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Introduction

Tunstall Response offers a wide range of monitoring and support services ('Service Lines'). These Umbrella Terms and Conditions apply to Tunstall's monitoring and support services in addition to those specified under each Service Line.

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions.

Charges: the charges payable for the Services under these terms and conditions as set out in the relevant Service Line or Service Lines (as the case may be).

Customer: means the person who buys or has agreed to buy the Services subject to 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 Data Protection Act 2018 or any successor legislation and the 'UK GDPR' enacted under the provisions of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419).

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 clause 13.7.

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 renewal agreement entered into between the Customer and Tunstall or, if no such agreement is entered into, the date on which Tunstall commences the provision of Services to the Customer.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks 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.

Material: means any materials, goods, products, equipment, systems, software, programs, data 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.

Personal Data: shall have the meaning given in the Data Protection Legislation.

Service Line: a document which sets out a description of services to be provided by Tunstall to the Customer, the Service Levels (if any) to be attached to those services and any other relevant matters relating to delivery of the Services.

Service Levels: those standards of performance to be achieved by Tunstall in performing the Services as set out in any Service Line.

Services: the services described in any Service Line.

Service Request: shall have the meaning described in clause 3.

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 trading as "Tunstall Response".

1.2. The headings in these terms and conditions do not affect their interpretation. Except where the context otherwise requires, references to clauses are to clauses of these terms and conditions.

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 Services on these terms and conditions and on those terms applicable against the specific Service Line requested by the Customer.

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 Services as are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Tunstall shall notify the Customer in any such event.

2.4. 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 these terms and conditions 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.

2.5. Tunstall will supply those parts and materials detailed in the applicable Service Line necessary for the provision of the Services. For the avoidance of doubt, such parts and materials do not include any monitoring apparatus, fire alarms, sensors or other equipment required by the Customer to receive the Services unless specifically agreed between Tunstall and the Customer.

2.6. 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. SERVICE REQUESTS

3.1 For the purposes of these terms and conditions a Service Request is a request to change (including to cease) any Service Line or add a new Service Line.

3.2 Service Requests may be originated by the Customer issuing such request in writing to Tunstall. On receipt of a Service Request, Tunstall shall provide the Customer, within 30 days of receiving the Service Request, 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.

3.3 Save where otherwise stated herein, Tunstall shall not be obliged to agree a Service Request, 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.

3.4 Tunstall and the Customer shall discuss any Service Request 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 Request will not proceed.

3.5 Once the Customer has given its written agreement in accordance with clause 3.4(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.

4. CHARGES

4.1 The Customer shall pay the charges set out in a Service Line for the performance of the Services. They may be varied in accordance with condition 4.2.

4.2 Tunstall may increase its underlying charging rates by Tunstall giving the Customer written notice of any such increase 3 months before the proposed date of increase. For the avoidance of doubt, Tunstall's charges for the Services provided to

the Customer may be varied more regularly as a result of changes to service scope, service procedures, call volumes or where the Customer requires changes to the Services supplied.

4.3 Charges shall be paid by the Customer within 30 days of the date of Tunstall's invoice for such charges.

4.4 VAT shall be added to the all charges at the prevailing rate.

4.5 Without limiting any other right or remedy of Tunstall, if the Customer fails to make any payment due to Tunstall under these terms and conditions by the due date for payment, Tunstall 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 Bank of England accruing on a daily basis from the due date for payment of the overdue amount, whether before or after judgement and compounding quarterly and/or claim interest and costs under the Late Payment of Commercial Debts (Interest) Act 1998.

4.6 The Customer shall pay all amounts due under these terms and conditions 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.

5. OBLIGATIONS OF THE CUSTOMER

The Customer agrees with Tunstall to:

5.1 at all times observe such of Tunstall's operating instructions as are relevant to the Services;

5.2 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 between Tunstall and the Customer for the provision of the Services or any Service Line;

5.3 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;

5.4 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;

5.5 not remove, deface or obscure any identifying mark or packaging on or relating to any Material

5.6 not assign or transfer any of its rights, benefits or obligations under the agreement between Tunstall and the Customer for the provision of the Services without the prior written consent of Tunstall;

5.7 ensure that all Service Users and contacts are made aware that telephone communication with Tunstall may be voice recorded;

5.8 keep Tunstall indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Tunstall arising out of or in connection with any breach of this agreement or Service Line terms; and

5.9 comply with such additional obligations as may be described in the Service Line relevant to the supply of the Services.

6. TITLE AND RISK

6.1 Material provided to the Customer by Tunstall pursuant to a Service Line shall at all times remain the property of Tunstall, and the Customer shall have no right, title or interest in or to that Material (other than the right to possession and use of it subject to these terms and conditions or the relevant Service Line)

6.2 The risk of loss, theft, damage or destruction of the Material shall pass to the Customer on delivery and remain with the Customer during the term of the agreement between Tunstall and the Customer for the provision of the Services or the relevant Service Line (as the case may be). The Customer acknowledges that Tunstall shall not be responsible for any loss of or damage arising out of or in connection with any negligence, misuse, mishandling or otherwise caused by the Customer, and the Customer undertakes to indemnify Tunstall on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the these terms and conditions or any Service Line.

7. DATA PROTECTION

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

7.2 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).

7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Tunstall and the processing of it by Tunstall for the duration and purposes of the provision of the Services including for the purposes of continuous development of Tunstall products and services and the Customer will promptly provide evidence of such consent to Tunstall on request.

7.4 Without prejudice to the generality of clause 7.1, Tunstall shall, in relation to any Personal Data processed in connection with the performance by Tunstall of its obligations under any Service Line:

- a. process that Personal Data only on the written instructions of the Customer unless as necessary to allow Tunstall to comply with the UK GDPR;
- 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, anonymising 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 United Kingdom or European Economic Area (EEA) unless the prior written consent of the Customer has been obtained, is in accordance with Chapter V of the UK GDPR 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 clause 7.

7.5 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 clause 7.

8. INTELLECTUAL PROPERTY

8.1 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 between Tunstall and the Customer for the provision of the Services.

8.2 In respect of Material created for the Customer as part of the Services (including any pseudonymized, anonymized data under clause 7.4(b)), 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.

8.3 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.

8.4 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 between Tunstall and the Customer for the provision of the Services (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.

8.5 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.

9. LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 9

9.1 Tunstall shall not be liable for any loss or damage to the Customer arising by reason of 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.

9.2 Nothing in these terms and 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.

9.3 All warranties conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the agreement between Tunstall and the Customer for the provision of the Services and any Service Line.

9.4 If Tunstall's performance of its obligations under the agreement between Tunstall and the Customer for the provision of the Services 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 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.

9.5 Tunstall shall not be liable for any indirect or consequential loss arising from the non-performance of 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.

9.6 Without prejudice to condition 9.2, Tunstall's total liability arising under or in connection with the agreement between Tunstall and the Customer for the provision of the Services 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 these terms and conditions and all Service Lines in such year.

10. DURATION OF THE AGREEMENT BETWEEN TUNSTALL AND THE CUSTOMER FOR THE PROVISION OF THE SERVICES

10.1 The agreement between Tunstall and the Customer for the provision of the Services shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with clause 11, until either party gives to the other party 90 days' written notice to terminate, expiring on any anniversary of the Effective Date.

11. TERMINATION

11.1 Without affecting any other right or remedy available to it, either the Customer or Tunstall may terminate the agreement between them for the provision of the Services 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 between Tunstall and the Customer for the provision of the Services 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 the agreement between Tunstall and the Customer for the provision of the Services has been placed in jeopardy.

11.2 Without affecting any other right or remedy available to it, Tunstall may terminate the agreement between Tunstall and the Customer for the provision of the Services with immediate effect by giving written notice to the Customer if:

- a. the Customer fails to pay any amount due under the agreement between Tunstall and the Customer for the provision of the Services on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
- b. there is a change of Control of the Customer.

11.3 On termination of the agreement between Tunstall and the Customer for the provision of the Services 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 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 between Tunstall and the Customer for the provision of the Services which existed at or before the date of termination;
- c. the Customer shall, within a reasonable time, return all of Tunstall's 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 these terms and conditions 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.

12. CONFIDENTIALITY

12.1 The Customer undertakes that it shall not at any time during the agreement between Tunstall and the Customer for the provision of the Services, and for a period of five years after termination of such 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 clause 12.2.

12.2 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 between Tunstall and the Customer for the provision of the Services. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 The Customer shall not use Tunstall's confidential information for any purpose other than to perform its obligations under the agreement between Tunstall and the Customer for the provision of the Services.

13. GENERAL

13.1 Telephone network providers are switching their networks from analogue to digital. This work is due to be completed by December 2025. Customers should refer to the Guidance issued by the UK Government from time to time. Tunstall terms of supply are always subject to the availability of the requisite technology and infrastructure to support Tunstall Services.

13.2 No variation of any of the provisions of these terms and conditions or a Service Line shall be binding upon Tunstall unless it is in writing and signed by a Director on behalf of Tunstall.

13.3 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 these terms and conditions or any Service Line.

13.4 A waiver of any right under these terms and conditions is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or failure.

13.5 If a court or any other competent authority finds that any provision of these terms and conditions (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 these terms and conditions shall not be affected.

13.6 These terms and conditions and the documents referred to in them 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 these terms and conditions or a Service Line.

13.7 If any dispute arises in connection with these terms and conditions, 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.

13.8 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 these terms and conditions. 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 Agreement or any Service Line without Tunstall's prior written consent.

13.9 Any notice or other communication given to a party under or in connection with these terms and conditions 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 clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

a. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.9; 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..

b. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.10 No one other than a party to the agreement between Tunstall and the Customer for the provision of the Services shall have any right to enforce any of its terms.

13.11 References in these terms and conditions to a party shall be deemed to include the agents, subcontractors, consultants and employees of that party.

13.12 Nothing in these terms and conditions 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.

14. FORCE MAJEURE

14.1 Tunstall shall not be liable for;-

14.1.1 any failure or delay 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, national or local lockdown, 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; or

14.1.2 any interruption to the public electronic communications network used by Tunstall or by the Customer for the provision of any Service or a Tunstall systems failure or a Tunstall systems overload caused by an unplanned and unforeseen event which places excessive levels of demand upon Tunstall infrastructure and Services.

15. LAW

15.1 These terms and conditions, and any non-contractual disputes or claims arising out of them 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.

