

## Umbrella Terms and Conditions for the Supply of Smart Hub Services

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TUNSTALL HEALTHCARE (UK) LTD

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### 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 Services and which incorporates these terms and conditions.

**Charges:** the charges payable for the Services under the Agreement as set out in the relevant Service Line or Service Lines (as the case may be).

**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 UK GDPR (having the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018); 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).

**Dispute Resolution Procedure:** the procedure described in condition 12.6.

**Effective Date:** the date of 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.

**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.

**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 3.

**Smart Hub:** the Lifeline Smart Hub social alarm device provided by Tunstall.

**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 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 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.

- 2.5 Tunstall will supply those parts and materials detailed in the applicable Service Line necessary for the provision of the Services.
- 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 CHANGES**

- 3.1 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 or to add or remove a module (or modules) to or from an existing Service Line.
- 3.2 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 likely effects 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 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.
- 3.4 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 (or additional Services, as the case may be) described in the relevant Service Line;
    - (ii) Tunstall shall cease the provision of the Services (or part of the Services, as the case may be) described in the relevant Service Line; or
    - (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.
- 3.5 Once the Customer has given its written agreement in accordance with condition 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 and the relevant Service Line.

### **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 Charges may be increased by Tunstall giving the Customer written notice of any such increase 3 months before the proposed date of increase.
- 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 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 the Agreement 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 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.
- 4.6 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.

## **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 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 or any Service Line without the prior written consent of Tunstall; and
- 5.7 comply with such additional obligations as may be described in the Service Line relevant to the supply of the Services.

## **6. DATA PROTECTION**

- 6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 6.2 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).

- 6.3 Without prejudice to the generality of condition 6.1, 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 and the Customer will promptly provide evidence of such consent to Tunstall on request.
- 6.4 Without prejudice to the generality of condition 6.1, Tunstall shall, in relation to any Personal Data processed in connection with the performance by Tunstall of its obligations under any Service Line and the Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless Tunstall is required by the law of the United Kingdom or any part of the United Kingdom applicable to Tunstall to process Personal Data;
  - (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 6.

- 6.5 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 6.
- 6.6 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.

## **7. INTELLECTUAL PROPERTY**

- 7.1 Except as may otherwise be stated in any Service Line, 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.

## **8. LIMITATION OF LIABILITY**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION 8**

- 8.1 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.
- 8.2 Nothing in these terms and conditions or any Service Line 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.
- 8.3 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.
- 8.4 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 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.

- 8.5 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.
- 8.6 Without prejudice to condition 8.2, 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.

## **9. DURATION OF THE AGREEMENT**

- 9.1 Unless an earlier expiry date has been agreed between the parties before commencement of the Agreement, the Agreement shall commence on the Effective Date and shall continue for a period of five years unless terminated earlier in accordance with condition 10, or (if earlier) until the Customer ceases to receive any of the Services from Tunstall.

## **10. TERMINATION**

- 10.1 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 the Agreement has been placed in jeopardy.
- 10.2 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 the Agreement or the relevant Service Line on the due date for payment and remains in default not less than ten days after being notified in writing to make such payment; or
  - (b) there is a change of Control of the Customer.
- 10.3 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 the Material. 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 the 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.

## **11. CONFIDENTIALITY**

- 11.1 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 11.2.
- 11.2 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 11; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 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.

## **12. GENERAL**

- 12.1 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.
- 12.2 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.
- 12.3 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.

- 12.4 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 the Agreement shall not be affected.
- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 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.
- (a) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 12.8; 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.
  - (b) The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.
- 12.9 No one other than a party to the Agreement shall have any right to enforce any of its terms.
- 12.10 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.
- 12.11 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.
- 13. FORCE MAJEURE**
- 13.1 Tunstall shall not be liable for any failure or delay in providing the Service, or parts or components for a Smart Hub 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.

**14. LAW**

- 14.1 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.