

## Service Line – Software Maintenance Services

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TUNSTALL HEALTHCARE (UK) LTD

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### 1. INTERPRETATION

- 1.1. Terms defined in the Umbrella Terms shall, unless otherwise defined in this Service Line, have the same meaning in this Service Line. In addition, the following definitions apply in this Service Line:

**Authorised Employee:** has the meaning given in paragraph 4.3(e);

**Customer:** the person named as the Customer in the Umbrella Terms;

**Fault Call:** means a call for assistance made by the Customer in accordance with paragraph 5.1;

**Fee Rates:** means Tunstall's hourly or daily fee rates set out in the quotation provided by Tunstall to the Customer;

**Material:** means any documents, materials, goods, products, equipment, systems, computer programs or processes, in whatever form, used by Tunstall to provide the Service or supplied by Tunstall to the Customer in the performance of the Service;

**Maintenance Release:** means a release of software which corrects faults, improves functionality or otherwise amends or updates the Software, but which does not constitute a new or upgraded version of the Software;

**New Version:** has the meaning given in paragraph 3.5;

**Service:** the maintenance and support services specified in paragraphs 3 and 4 below;

**Software:** means the computer programs listed in the licence agreement referred to in paragraph 2.1 that are to be maintained in accordance with the terms of this Service Line;

**Software Services:** the services described in paragraph 3.2;

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

**Umbrella Terms:** Tunstall's umbrella service terms that are incorporated into the agreement entered into between Tunstall and the Customer.

- 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. The performance of the Service is conditional upon the Customer having in place a valid and subsisting licence agreement with Tunstall for the supply to and use by the Customer of the Software.

- 2.2 The Service shall comprise:

(a) a telephone help desk to provide first-line technical support to the Client with regards to the

Software;

- (b) remote diagnosis and, where possible, correction of software faults in accordance with the terms of this Service Line; and
- (c) where necessary, second-line on-site technical support.

Where a non-critical fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release Tunstall may not provide assistance in respect of that non-critical fault.

2.2. Tunstall may (at its absolute discretion) withhold the Service or make a charge at the Fee Rates:

- (a) where any payment is overdue at a time when performance of the Service is required;
- (b) where access for provision of the Service pursuant to paragraph 6.1(ii) cannot be obtained at the relevant time for performance of the Service; or
- (c) where in the reasonable opinion of Tunstall access for provision of the Service pursuant to paragraph 6.1(ii) cannot be exercised safely.

2.3. Tunstall may (at its absolute discretion) make a charge at the Fee Rates for a site visit that is necessary to rectify a fault that in the reasonable opinion of Tunstall is attributable to any default by the Customer.

### **3. MAINTENANCE SERVICES**

#### **3.2 Software Services**

##### **(a) Fault Diagnosis and Rectification**

Tunstall will provide fault diagnosis and recommendations for correction following a Problem Call reporting any fault or problem with the Software. In particular, Tunstall will:

- (i) investigate the problem within the timescale appropriate to the priority assigned to the problem; and
- (ii) attempt to generate a fix by providing a bug fix, permanent patch or application software release (as the case may be) and installing the same at the Customer's premises; or
- (iii) agree with the Customer that the perceived problem complies with the latest agreed version of the physical system specification for the software was due to operator misunderstanding; or
- (iv) provide a workaround for the problem; or
- (v) explain in the case of an operator manipulation error, the correct manipulation; or
- (vi) agree that no action is to be taken in cases where the solution would not be cost-effective to implement.

##### **(b) Site Visits**

Although the diagnosis and solution of operational problems with the Software may be carried out remotely, where a visit to the Customer's premises is necessary to discharge Tunstall's obligations under this paragraph, such site visits will be carried out in accordance with the provisions of paragraphs 4.4.

### **3.3 Telephone Support**

Tunstall will provide telephone support on the routine use and operation of the Software and telephone advice and assistance on user procedures and on ideas and methods intended to assist the Customer in obtaining the best possible use from the Software.

### **3.4 Maintenance Releases**

Tunstall may from time to time issue Maintenance Releases seeking to remedy previously identified faults in the Software. Such releases shall be issued at Tunstall's sole discretion and shall be installed by Tunstall. The Customer shall provide such remote access and assistance as Tunstall shall reasonably require to enable Tunstall to successfully install such Maintenance Releases.

### **3.5 Software Upgrades**

Tunstall may from time to time issue new versions of the Software which provide additional or improved functionality ("**New Version**"). Tunstall shall notify the Customer promptly in writing of the issue of any New Version, specifying the following:

- (a) the charge for delivery and installation of the New Version;
- (b) the licence fee payable for the New Version; and
- (c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.

If requested by the Customer and on payment of the appropriate fees, Tunstall shall issue and install the New Version on the Customer's hardware and shall supply to the Customer all revisions to the Documentation which are necessary to reflect the New Version. To enable the installation of the New Version, the Customer shall provide such remote access and assistance as Tunstall shall reasonably require, including (for the avoidance of doubt) attendance at the Customer's premises of suitably qualified staff who are able to verify and accept the installation of the New Version.

### **3.6 Telephone Help Facility**

Tunstall will provide and maintain a telephone help facility for the purposes of reporting Software problems and for the provision of telephone support in accordance with the terms of this Service Line.

## **4 FAULT REPORTING AND RESPONSE**

### **4.1 Problem Identification**

Where the Customer identifies a fault or problem with the Software, it shall contact the Telephone Help Facility described in paragraph 3.6 and shall provide to Tunstall such of the following information as may be relevant:

- (a) user name,
- (b) user location,
- (c) user telephone number,
- (d) date and time of problem,
- (e) error message number and text,
- (f) description of problem,
- (g) events that led to problem,

- (h) in all cases, the Customer's unique number for the fault.

#### **4.2 Response**

On receipt of a Fault Call, Tunstall shall:

- (a) determine the priority of any incident in accordance with the table contained in the Appendix to this Service Line;
- (b) immediately allocate a unique call reference number (cross referenced to the Client Problem Report Number) which will be quoted in all subsequent communications relevant to the problem; and
- (c) will respond to the call within the response time relevant to the priority determined for the incident (as described in the table contained in the Appendix to this Service Line).

#### **4.3 Access**

The Customer shall make available or use all reasonable endeavours to procure that there is made available to Tunstall such access (including, for the avoidance of doubt, remote access using appropriate communication links) to the Customer's premises, hardware systems, data, computer time and programs, as shall be reasonably necessary for the provision of the Service, provided that Tunstall shall:

- (a) use all reasonable endeavours to give reasonable notice to the Customer of the need to exercise such rights,
- (b) exercise such rights with the express approval of the Customer subject to such reasonable conditions as the Customer may attach to such access,
- (c) ensure that such rights are exercised in such a way as to cause minimum disruption to the operations of the Customer,
- (d) ensure that the any network connection to the Customer's system and any Customer owned equipment is used only for the provision of the Service;
- (e) allow only employees approved in advance by the Customer ("Authorised Employees") to access the network connection or any Customer owned equipment;
- (f) promptly notify the Customer whenever any Authorised Employee leaves the Tunstall's employ or no longer requires access to the network connection or Customer owned equipment; and
- (g) promptly notify the Customer in writing upon a change in the user base for the work performed over the network connection or whenever in Tunstall's opinion a change in the connection and/or functional requirements of the network connection is necessary.

#### **4.4 Site Visit Conditions**

When undertaking a site visit, Tunstall shall:

- (a) observe all reasonable directives and procedures issued by the Customer, including security procedures, local rules, instructions and policy statements,
- (b) give due consideration to the safety and welfare of others, and
- (c) use all reasonable endeavours to minimise interference with the Client's day to day business being performed at the premises.

## **5. EXCLUSIONS FROM THE SERVICE**

The Customer acknowledges that the Service does not include:

- 5.1 Software not supplied by Tunstall;
- 5.2 Issues arising due to a failure, in the reasonable opinion of Tunstall, of the Customer to maintain a broadband internet connection in accordance with the terms of paragraph 6.3.

## **6. THE CUSTOMER'S RESPONSIBILITIES**

### **6.1. The Customer shall:**

(a) provide Tunstall in a timely manner with:

- (i) all necessary co-operation and assistance in relation to this Service Line, including the provision of and access to such of the Customer's information technology and operational resource as Tunstall may require;
- (ii) such access to the Customer's premises, systems and data, and such office accommodation and other facilities, as may be required by Tunstall; and
- (iii) all necessary access to such information as may be required by Tunstall;

to enable it to provide the Service;

For the avoidance of doubt, the access referred to in paragraph 6.1(a)(ii) shall include:

- (A) access to parking facilities (at no charge to Tunstall) during the performance of the Service;
  - (B) the right for Tunstall to enter any such premises where Material is stored or installed to recover it on termination of the agreement for the provision of services to the Customer; and
  - (C) the right to enter any premises that contain (without limitation) any wires, cabling, pipes, ducting or other equipment that is required to be maintained for the performance of the Service;
- (b) comply with all applicable laws and regulations (in particular, but without limitation, the Data Protection Act 2018) with respect to its activities under this Service Line;
- (c) carry out all other Customer responsibilities set out in this Service Line or in the Umbrella Terms in a timely and efficient manner. In the event of any delay in Customer's provision of such assistance as agreed by the parties, Tunstall may adjust any timetable or delivery schedule as reasonably necessary and increase its charges accordingly.

### **6.2. The Customer shall ensure that all data and information provided by it or on its behalf to Tunstall pursuant to the terms of this Service Line is free from any viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful.**

### **6.3 The Customer agrees with Tunstall to:**

- (a) observe such of Tunstall's operating instructions as are relevant to the Service;
- (b) have in place and maintain at all times broadband internet access complying with the minimum standards notified by Tunstall to the Customer from time to time;
- (c) ensure that it has secured for itself and Tunstall all necessary licences, consents and approvals for the use of such third party software as the Customer has agreed to provide to enable the performance of the Service. The Customer shall comply with such licences and shall indemnify

and hold Tunstall harmless against any loss or damage which it may suffer or incur as a result of the Customer 's failure to obtain, maintain or comply with such licences;

- (A) provide to Tunstall at all reasonable times and at no charge access to any data, information, equipment and/or premises required by Tunstall in order to perform the Service and which is not under the direct control of Tunstall;
- (e) 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 or the Material in whole or in part; and
- (f) not repair, modify, maintain or service or permit any third party to repair, modify, maintain or service any Software without the prior written agreement of Tunstall.

6.4 The Customer acknowledges that Tunstall shall have no liability for the non-performance of its obligations set out in this Service Line if the non-performance is attributable to any of the causes set out in paragraphs 6.1 to 6.3 above.

## **7. PROPRIETARY RIGHTS**

- 7.1 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 Umbrella Terms grants the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Service or any related documentation.
- 7.2 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.

## **8. CHARGES**

The Customer shall pay the charges set out in the quotation provided by Tunstall to the Customer.

**APPENDIX**  
**PROBLEM PRIORITIES AND RESPONSE TIMES**

Priority	Description	Response time
Priority 1*	The entire emergency calls handling services are completely inaccessible including backup system. Priority 1 incidents shall be reported by telephone only.	Available 24 hours per day, Response within 4 hours of receipt. Where Back- up service is operational Response as per Priority 2
Priority 2*	Operation of the emergency calls handling services is severely degraded, or major components of the emergency calls handling services are not operational and work cannot reasonably continue including backup system. Incidents shall be reported by telephone only.	Available 24 hours per day, Response within 4 hours of receipt. Where Back- up service is operational next working day.
Priority 3	Certain non-essential features of the services are impaired while most major components of the services remain functional.	Response next business day following receipt of the request.
Priority 4	Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the services.	Response within 2 business days following time of receipt of the request.

*\* Priority 1 and Priority 2 Calls are for problems with PNC/calls handling. Priority 1 and Priority 2 will not be allocated to issues relating to Service Manager or any other non-emergency software deployed by Tunstall.*