

1. INTERPRETATION

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

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Service and the Documentation.

Connection Procedure: the procedure by which Authorised Users are enabled to use the System.

Customer: the person who buys or has agreed to buy the Services subject to these terms and conditions.

Customer Data: the data inputted into the information fields of the System by the Customer or by service users of the Customer.

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

Service: the right to access and use the System more particularly described in this Service Line and the Documentation.

Service User: a designated user of the Service in whose home equipment and/or some or all of the Software is normally installed.

Software: the software applications provided by Tunstall as part of the Service as more particularly described in the Documentation.

Support Service: the software support service referred to in clause 5.3.

System: Tunstall's ICP triagemanager system which is a web-based application which enables clinicians to interpret vital signs readings and health interview responses provided by patients living in their own home, or in a residential care setting.

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

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 published at www.tunstall.co.uk/telehealth-umbrella-terms.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

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.

(A) Unless the context otherwise requires, a reference to one gender shall include a reference to all genders.

2. SERVICE ADMINISTRATION

2.1. Tunstall shall appoint a Delivery Manager, who shall have the responsibility and commensurate authority for the overall performance of the Service and to whom all questions regarding this Service Line can be referred. The name and contact details of the appointed individual shall be notified in writing to the Customer.

2.2. The Customer shall appoint and maintain for the duration of the provision of the Service an individual to serve as primary contact with Tunstall for the purpose of the provision of the Service. The name and contact details of the appointed individual shall be notified in writing to Tunstall in accordance with this clause.

3. SERVICE PROVISION

3.1. Subject to the restrictions set out in this clause 3 and the other terms and conditions of this Service Line and the Umbrella Terms, Tunstall hereby grants to the Customer a non-exclusive, non-transferable right to permit Authorised Users to use the Service and the Documentation solely for the Customer's internal business operations.

3.2. The Customer undertakes that:

- (a) it shall ensure that each Authorised User keeps a secure password in respect of the use of the Service and Documentation and shall keep such password confidential;
- (b) it shall permit Tunstall to audit its use of the Service in order to verify compliance with this Service Line and the Umbrella Agreement. 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 clause 3.2(b) reveal that the Customer has under paid any 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.

3.3. The Customer shall comply with such acceptable usage policies as may be notified to it from time to time and shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of 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 clause.

3.4. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software 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 Software; or
- (b) access all or any part of the Service and Documentation in order to build a product or service which competes with the Service and/or the Documentation; or
- (c) use the Service and/or Documentation to provide Service to third parties other than to the Customer's Service Users; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to any third party other than to the Customer's Service Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this clause 3.

3.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Tunstall.

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

4. SERVICE

4.1. Tunstall shall provide the Service and make available the Documentation to the Customer on and subject to the terms of this Service Line and the Umbrella Terms.

4.2. Tunstall shall use commercially reasonable endeavours to make the Service available 24 hours a day, seven days a week, except for acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of Tunstall or any other party), failure of a utility service or transport network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of contractors or subcontractors. Notwithstanding the above, the Customer recognises that Tunstall may be reliant upon third party providers (including network service providers) for the supply of some elements of the Service and shall not be required to provide a level of availability that is greater than the level provided to it by the relevant third party provider. The Customer acknowledges that in measuring the availability of the Service, no regard shall be had to:

- (a) planned maintenance carried out following the provision to the Customer of at least 48 hours' notice in advance; and
- (b) unscheduled maintenance whenever carried out, provided that Tunstall shall use reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3. Tunstall will, as part of the Service and at no additional cost to the Customer, provide the Customer with the Support Service during Normal Business Hours. Tunstall may amend the Support service in its sole and absolute discretion from time to time.

5. TUNSTALL'S OBLIGATIONS

5.1. Tunstall undertakes that the service will be performed substantially in accordance with the Documentation and with reasonable skill and care.

5.2. The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to:

- (B) Tunstall's instructions; or
- (C) The terms of this Service Line and/or the Umbrella Terms, or
- (D) Modification or alteration of the service by any party other than Tunstall or Tunstall's duly authorised contractors or agents.

5.3. If the Service does not conform with the foregoing undertaking, Tunstall will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, Tunstall:

- (a) does not warrant that the Customer's use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the Customer through the Service will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.4. Nothing in this Service Line or the Umbrella Terms shall prevent Tunstall from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or service which are similar to those provided under this Service Line or the Umbrella Terms.

5.5. Tunstall warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Service Line.

6. CUSTOMER DATA

6.1. 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.

- 6.2. The Customer shall be responsible for the migration, transfer, updating and other uploading of Customer Data onto the System as is required to enable the use of the Service by the Customer.
- 6.3. 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 of the Umbrella Terms.

7. THE CUSTOMER'S RESPONSIBILITIES

7.1 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 or the performance of such acts or tasks as Tunstall may reasonably 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 (including but not limited to Customer Data, security access information and configuration services);
- (b) promptly input into the System all such Customer Data as may be required by Tunstall to provide Service to the Customer under this or any other Service Line;
- (c) comply with all applicable laws and regulations (in particular, but without limitation, the Data Protection Act 2018, the General Data Protection Regulation ((UK) (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the United Kingdom and then any successor legislation to the GDPR or the Data Protection Act 2018) with respect to its activities under this Service Line;
- (d) 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.

- 7.2 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 (including Customer Data) is free from any Viruses or other material which is malicious or technologically harmful.

8 CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) comply with:
 - (i) the terms of the Connection Procedure when connecting Authorised Users to the Service;
 - (ii) such other reasonable procedures relating to the use of the Service as Tunstall shall notify to the Customer from time to time;

- (b) all applicable laws and regulations with respect to its activities under this Service Line;
- (c) not use or permit the use of the Service to transmit data that infringes any applicable laws, regulations or third party rights (including material that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of a third party's intellectual property rights);
- (d) ensure that the Authorised Users and Service Users use the Service, the Software and the Documentation in accordance with this Service Line and the Umbrella Terms and shall be responsible for any Authorised User's or Service User's breach of this Service Line or the Umbrella Terms;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Tunstall, its contractors and agents to perform their obligations under this Service Line, including without limitation the Service;
- (f) ensure that its network and systems comply with any relevant specifications provided by Tunstall from time to time. In particular, the Customer shall promptly install and implement any updates, upgrades, modifications and enhancements to its system and acknowledges that any failure to do so could lead to security risks in its use of the Service;
- (g) comply with such reasonable instructions that may be given to it by Tunstall which are necessary for reasons of:
 - (i) health and safety;
 - (ii) quality of the Service;
 - (iii) an interruption to the Service for:
 - (A) unplanned engineering works due to an emergency; or
 - (B) planned engineering works or service upgrades properly notified under this agreement;
 - (iv) an emergency; or
 - (v) ensuring compliance by Tunstall with relevant and applicable EU and/or UK legislation or regulations;
- (h) follow any reasonable instructions given to it by Tunstall (including testing with the latest commercially available virus detection software) to ensure that any software used with or in connection with the Service is not infected by any or any other types of disruptive, destructive or nuisance programs;
- (i) report faults or requests for support only to Tunstall's support team at the number or email address provided from time to time for such purpose, providing such information as Tunstall shall reasonably require to assist it in remedying such faults or providing support in accordance with this Service Line and the Umbrella Terms;
- (j) be solely responsible for maintaining the security of any equipment connected to the Service; and

- (k) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the System, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.2 The Customer acknowledges that Tunstall shall provide some elements of the Service under standard terms provided by relevant third parties. The Customer agrees to be bound by such terms and to ensure that the Authorised Users are bound under similar obligations. In particular, the Customer agrees:

- (a) To comply with the terms of any contract that Tunstall shall have with a third party provider of goods and/or Service and upon which Tunstall is reliant for the provision of the Service (as the same may be amended from time to time by Tunstall giving no less than 30 days' notice to the Customer);
- (b) To indemnify Tunstall against all such additional fees, costs and charges as Tunstall may incur from a relevant third party by reason of the Customer's termination of this agreement or early cancellation of any element of it (including, for the avoidance of doubt, any cancellation charges or compensation payable by Tunstall to the relevant third party); and
- (c) Notwithstanding the provisions of clause 9 of the Umbrella Terms, where any liability arises under or in connection with this Service Line or the Umbrella Terms as a result of the acts or omissions of a third party provider, Tunstall's liability to the Customer in respect of such acts or omissions shall not exceed the amounts recoverable by Tunstall from the relevant third party provider.

9. PROPRIETARY RIGHTS

- 9.1. 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.
- 9.2. 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.

10. CHARGES

- 10.1. The Customer shall pay the charges set out from time to time in the Tunstall's pricing schedule.
- 10.2. Tunstall shall include with each invoice issued to the Customer a written statement setting out how the charges in the relevant month have been calculated.

