

Telehealth - Umbrella Terms and Conditions



Telehealth - Umbrella Terms and Conditions

Introduction

These Umbrella terms set out the general terms under which all Telehealth Service Lines are provided.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 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: any data protection legislation from time to time in force in the United Kingdom 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 13.6.

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 Agreement.

Equipment: means any hardware, equipment or other peripheral apparatus required by the Customer's service users to receive the Services.

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, 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, but does not include the Equipment or software or programs determined by Tunstall from time to time (in its sole discretion) as being part of Tunstall's connected care monitoring system.

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 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.

1.2 The headings in these terms and conditions do not affect its interpretation. Except where the context otherwise requires, references to clauses are to clauses of these terms and conditions or any Service Line (as the case may be).

1.3 Unless the context otherwise requires:

1.4 references to the Customer and Tunstall include their permitted successors and assigns;

1.5 references to statutory provisions include those statutory provisions as amended or re-enacted;

1.6 references to one gender includes a reference to the other genders; and

1.7 references to "*including*" or "*includes*" shall be deemed to have the words "*without limitation*" inserted after them.

1.8 If any conflict arises between these terms and conditions of this agreement and any provision of any schedule or Service Line, these terms and conditions shall prevail.

1.9 Words in the singular include the plural and those in the plural include the singular.

1.10 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.

1.11 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 the Agreement 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 Service 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 Equipment unless specifically agreed between Tunstall and the Customer.

2.6 The Customer acknowledges that Tunstall may provide some elements of the Services under standard terms provided by relevant third parties. The Customer agrees to be bound by such terms and to ensure that its service users are bound under similar obligations. In particular, the Customer agrees:

(i) To comply with the terms of any contract that Tunstall shall have with a third party provider of goods and/or services and upon which Tunstall is reliant for the provision of the Equipment and/or the Services (as the same may be amended from time to time by Tunstall giving no less than 30 days' notice to the Customer);

(ii) 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, any Service Line or early cancellation of any element of them (including, for the avoidance of doubt, any cancellation charges or compensation payable by Tunstall to the relevant third party); and

2.7 Notwithstanding the provisions of clause 9, where any liability arises under or in connection with this Agreement 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.

2.8 The Customer acknowledges that it is responsible for the monitoring of and reaction to patient information provided by the Equipment as a result of the performance of the Services and, subject to clause 9.2, Tunstall are not responsible for any losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to adequately monitor such information or to take any action as should properly have been taken as a result of such monitoring.

2.9 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 this agreement 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 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 clause 4.2.

4.2 Tunstall may increase its underlying charging rates and charges 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, monitoring volumes or where the Customer requires changes to the Services supplied (including as a result of a Service Request).

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 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. 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 the terms and conditions of the Agreement 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 or the relevant Service Line (as the case may be).

6.3 The Customer shall, at its own expense, obtain and maintain the following insurances in respect of the Equipment/Material in its possession:

- (a) insurance against risk of loss damage or destruction of the Equipment to its full replacement value;
- (b) insurance to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) such other insurance as may be required by law or as Tunstall may from time to time consider reasonably necessary and advise to the Customer.

6.4 The Customer shall give immediate written notice to Tunstall in the event of any loss, accident or damage to the Equipment and Material in its possession or arising out of or in connection with the Customer's possession or use of the Equipment Material in its possession.

6.5 If the Customer fails to effect or maintain any of the insurances required under the Agreement, Tunstall shall be entitled to effect and maintain them, pay the necessary premiums and recover the same as a debt due from the Customer.

6.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Tunstall and proof of premium payment to Tunstall to confirm the insurance arrangements.

6.7 The Customer acknowledges that Tunstall shall not be responsible for any loss of or damage to the Equipment or Material in its possession arising out of or in connection with any negligence, misuse, mishandling of the Equipment 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 terms of the Agreement or any Service Line.

6.8 Unless otherwise agreed in the order for the Services placed by the Customer with Tunstall, the provisions of clauses 6.1 to 6.6 shall apply to the provision of the Equipment by Tunstall to the Customer.

6.9 Where it is agreed in the order for the Services placed by the Customer with Tunstall that the ownership of the Equipment is to pass to the Customer, the provisions of clauses 6.9 to 6.12 shall apply to the provision of the Equipment by Tunstall to the Customer.

6.10 the Equipment shall remain the sole and absolute property of Tunstall as legal and beneficial owner until such time as payment is received by it in full for the Equipment and all other sums which are or become due to Tunstall from the Customer on any account. Until ownership in the Equipment has passed, the Customer shall

- (a) hold the Equipment on a fiduciary basis as Tunstall's bailee;
- (b) keep the Equipment (at no cost to Tunstall) in satisfactory conditions and ensure that it remains readily identifiable as Tunstall's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (d) keep the Equipment insured on Tunstall's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Tunstall and hold the proceeds of such insurance on trust for Tunstall and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- (e) keep the Equipment in its possession properly maintained in the same condition it was in when delivered to it and shall make good any damage or deterioration.

6.11 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 11.1 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Tunstall on the due date. Where such circumstances arise, Tunstall may (without prejudice to any part of its other rights) recover or resell the Equipment or any of it.

6.12 The Customer grants Tunstall, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored or installed in order to inspect it, or where the Customer's right to possession of the Equipment has terminated, to remove it. All costs incurred by Tunstall in repossessioning the Equipment shall be borne by the Customer.

6.13 Tunstall may maintain any action for the price of the Equipment whether or not ownership in them has passed to the Customer.

6.14 Each sub-clause of this clause 6 is separate, severable and distinct. If any of them are for any reason unenforceable, the others shall remain in full force and effect.

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 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 and the Agreement:

(a) process that Personal Data only on the written instructions of the Customer unless Tunstall is required by the laws applicable to Tunstall to process Personal Data (Applicable Law);

(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.

7.6 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.

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.

8.2 In respect of Material specifically 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 (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 and any Service Line.

9.4 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.

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 clause 9.2, 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.

10. DURATION OF THE AGREEMENT

10.1 The Agreement 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 the fifth anniversary of the Effective Date or any subsequent anniversary of the Effective Date.

11. TERMINATION

11.1 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 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.

11.2 Without affecting any other right or remedy available to it, Tunstall may terminate the Agreement with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 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 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 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 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.

12. CONFIDENTIALITY

12.1 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 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. 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.

13. GENERAL

13.1 No variation of any of the provisions of the Agreement shall be binding upon Tunstall unless it is in writing and signed on behalf of Tunstall.

13.2 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.

13.3 A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or failure.

13.4 If a court or any other competent authority finds that any provision of the Agreement (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.

13.5 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.

13.6 If any dispute arises in connection with the Agreement, 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.

13.7 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. 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.

13.8 Any notice or other communication given to a party under or in connection with the Agreement 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 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 clause 13.8; 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 clause shall not apply to the service of any proceedings or other documents in any legal action.

13.9 No one other than a party to the Agreement shall have any right to enforce any of its terms.

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

13.11 Nothing in the Agreement 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 The Agreement, and any non-contractual disputes or claims arising out of the Agreement 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.

