

1. INTERPRETATION

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

Consumables: items used in the receipt of Tunstall’s services that must be replaced regularly because they wear out, are used up or are disposable.

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

Equipment: equipment connected to the System that is compatible with the System.

Incident: means with regard to a Medical Device or any system or product with which it interfaces or into which it is integrated:

1 any malfunction or deterioration in the characteristics and/or performance of, or any inadequacy in labelling that might lead to a death or a serious deterioration of health of a patient or user of such Medical Device, product or system; or

2 any problems due to technical or medical reasons related to product performance and functionality that has resulted in a systematic recall of similar products for reasons described in

(a) above

and a “near Incident” means any event, which under slightly different circumstances, may have resulted in an Incident.

Medical Device: has the meaning given in paragraph 2 of the Medical Devices Regulations 2002.

Products: the Equipment and the Consumables.

Supply Terms: the terms and conditions upon which Third Party Products are supplied to Tunstall.

System: Tunstall’s icp triagemanager software 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.

Third Party Products: Products that have not been manufactured by Tunstall.

Tunstall: Tunstall Healthcare (UK) Limited whose registered office is at Whitley Lodge, Whitley Bridge, Yorkshire DN14 0HR (Company No. 01332249).

Umbrella Terms: Tunstall’s umbrella service terms that are incorporated into the agreement entered into between Tunstall and the Customer and published at www.tunstall.co.uk/telehealth-umbrella-terms.

Warranty Period: in respect of any Equipment, the period of 12 months following the delivery of such Equipment to 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 all genders.

2. SUPPLY OF PRODUCTS

2.1 ORDERS FOR EQUIPMENT AND CONSUMABLES

2.1.1 When the Customer wishes to buy any Product it shall do so by providing an order to Tunstall in writing giving a description of the Product that it wishes to buy, the Customer's preferred central place for delivery and such other information as Tunstall shall reasonably require to enable delivery to take place. The order constitutes an offer by the Customer to buy the Product in accordance with this Service Line and shall be deemed to be accepted on the earlier of:

- (a) Tunstall issuing a written acceptance of the order; and
- (b) Tunstall doing any act consistent with fulfilling the order, at which point a contract shall come into existence.

2.1.2 Tunstall may, at its sole discretion, accept amendments to an order after it has been accepted.

2.1.3 All specifications, illustrations, colours, drawings and diagrams in Tunstall's catalogues, trade literature and other published matter are of a generally informative nature and are approximate only and none of them form part of this Service Line or give rise to any independent or collateral liability of any nature whatsoever on the part of Tunstall and Tunstall shall be under no liability whatsoever for inaccuracies, changes or alterations in dimensions or measurements given, quoted or made by it.

2.1.4 Tunstall reserves the right (but does not assume the obligation) to make any changes in the specification of Equipment which are required to conform with any legislation and which do not materially affect the nature or quality of the Equipment.

2.2 EQUIPMENT AND CONSUMABLES SALES

2.2.1 Tunstall shall sell the Products to the Customer subject to the Umbrella Terms and the terms and conditions of this Service Line.

2.3 DELIVERY

2.3.1 Delivery of the Products shall be made by Tunstall. Tunstall shall use all reasonable endeavours to effect delivery by the date and time agreed between the parties.

2.3.2 The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery of the Equipment. Acceptance of delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by Tunstall, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

2.3.3 Products will be delivered to the Customer's single designated delivery site within the Customer's administrative area or to such other site as may be agreed in writing by Tunstall and the Customer on a date or dates agreed between the parties.

2.3.4 Tunstall may (at its absolute discretion) refuse to make delivery of any further consignment of Products or make a charge at its then prevailing fee rates, either in whole or part, by notice in writing to the Customer without incurring any liability to the Customer for any loss caused by such refusal or cancellation:

- (i) where any payment under this or any other Service Line entered into between the parties is overdue at a time when the delivery of any Products is required;
- (ii) where access for delivery of the Products cannot be obtained at the relevant time for such performance or delivery;
- (iii) where in Tunstall's reasonable opinion access for delivery of the Products cannot be exercised

safely.

2.3.5 Tunstall may deliver the Products by instalments in such quantities as Tunstall in its sole discretion may determine. All the provisions of the Umbrella Terms and this Service Line shall (with any necessary alterations) apply to each instalment. Tunstall shall unload the Products at the Customer's risk.

2.3.6 The Customer shall have no claim whatsoever against Tunstall for any direct or indirect or consequential loss or damage of any kind (including, for the avoidance of doubt, loss of profit, loss of reputation and all interest, penalties and legal costs) arising from any failure to make delivery or any delay in delivery of Products.

2.3.7 Without prejudice to any other rights of Tunstall under the Umbrella Terms or this Service Line, if the Customer fails to give all instructions reasonably required by Tunstall, or fails to provide all necessary documents, licences, consents and authorities for delivering the Products or otherwise causes or requests delay, the Customer shall pay to Tunstall all reasonable storage and other costs of whatever nature incurred or arising from such delay.

2.3.8 Where Products are delivered in a damaged state or there is any shortfall in numbers delivered the Customer shall notify Tunstall in writing within seven days of delivery.

2.4 RISK AND TITLE

2.4.1 Subject to the repairing obligations of Tunstall set out in this Agreement and subject to title in the Products not having passed to the Customer, the risk of loss, theft, damage or destruction of the Products shall pass to the Customer on delivery.

2.4.2 Tunstall shall be under no obligation to effect insurance of the Products once risk has passed to the Customer.

2.4.3 Ownership of the Products shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Tunstall has received in full in cleared funds all sums due to it in respect of:

- (i) the Equipment; and

(ii) all other sums which are or which become due to Tunstall from the Customer on any account.

2.4.4 Until ownership of the Products has passed to the Customer under clause 2.4.3, the Customer shall:

- (i) hold the Products on a fiduciary basis as Tunstall's bailee;
- (ii) store the Products (at no cost to Tunstall) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Tunstall's property;
- (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (iv) keep the Products insured on Tunstall's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of 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.

2.4.5 Notwithstanding the provisions of clause 2.6, the Customer shall be entitled to install Products in its possession in accordance with Tunstall's installation instructions or manuals or to have Tunstall install such Products in accordance with the [Installation Service Line].

2.4.6. Where title in the Products remains with Tunstall, the Customer grants Tunstall, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect it (including, for the avoidance of doubt, premises where the Products have been installed), or where the Customer's right to possession has terminated, to remove them. All costs incurred by Tunstall in repossessing the Products shall be borne by the Customer.

2.4.7. The Equipment has software embedded within it (firmware). All copyright and other Intellectual Property Rights in the firmware will continue to be owned by Tunstall, who grants to the Customer a non-exclusive, irrevocable, royalty free licence to use any elements of such firmware until the end of the Term or earlier termination of this agreement.

2.4.8. On termination, Tunstall's rights contained in this clause 2.4 shall remain in effect.

2.4.9. Each sub-clause of this clause 2.4 is separate, severable and distinct. If any of them are for any reason unenforceable, the others shall remain in full force and effect.

2.5 CUSTOMER'S RESPONSIBILITIES

2.5.1. Where title in the Products has not passed to the Customer in accordance with the terms of this Service Line, the Customer shall:

- (i) permit Tunstall or its duly authorised representative to inspect the Products at all reasonable times and for such purpose to enter upon any premises at which the Products may be located, and shall grant (or procure the grant of) reasonable access and facilities for such inspection;
- (ii) not, without the prior written consent of Tunstall, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Products or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

- (iii) not suffer or permit the Products to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Products are so confiscated, seized or taken, the Customer shall notify Tunstall and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Products and shall indemnify Tunstall on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (iv) not use (or permit or suffer the use of) the Products for any unlawful purpose;
- (v) ensure that at all times the Products remain identifiable as being Tunstall's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- (vi) deliver up the Products promptly on termination of this agreement to such address as Tunstall requires, or if necessary allow Tunstall or its representatives access to any premises where the Products (or any part of it) are located for the purpose of removing such Products and, where the Customer has not delivered such Products to Tunstall in accordance with the terms of this clause, on demand pay to Tunstall the amount of all costs and expenses (including any storage, insurance, repair, transport, legal and remarketing costs) incurred by Tunstall in connection with removing and recovering such Products (or any part of it).

2.5.2. The Customer acknowledges that Tunstall shall not be responsible for any loss of or damage to the Products arising out of or in connection with any negligence, misuse, mishandling of the Products or otherwise caused by the Customer or its officers, employees, agents, contractors and end users, 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 Umbrella Terms or terms of this Service Line.

2.6 WARRANTY

2.6.1. Tunstall warrants that the Equipment shall substantially conform to its specification (as made available by Tunstall), be of satisfactory quality and fit for any purpose held out by Tunstall.

2.6.2. Tunstall shall remedy, free of charge, any material defect in the Equipment which manifests itself during the Warranty Period, provided that:

- (i) the Customer gives written notice of the defect to Tunstall within seven days of the time when the Customer discovers or ought reasonably to have discovered the defect;
- (ii) the Customer returns such Equipment to Tunstall's place of business for examination;
- (iii) the Customer has, on giving notice, immediately ceased to use the Equipment in respect of which it such notice has been given under clause 2.8.2(i);
- (iv) the defect did not arise:
 - (a) as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than Tunstall's authorised personnel;
 - (b) because the Customer failed to follow Tunstall's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;

- (c) out of any information, design or any other assistance supplied or furnished by the Customer or on its behalf;
- (d) as a result of the Customer having altered or repaired the Equipment without the written consent of Tunstall;
- (e) where the Equipment has been used in conjunction with any equipment or materials manufactured or supplied to the Customer by a third party other than Tunstall;
- (f) where the Equipment have been used improperly or outside of its normal application; and
- (g) the defect is directly attributable to defective material, workmanship or design.

2.6.3. Tunstall's obligations under clause 2.6.2 do not include the replacement of batteries. Tunstall will make an additional charge where batteries need to be replaced. The Customer shall not make any attempt to replace batteries itself.

2.6.4. Tunstall may make an additional charge at its then prevailing fee rates for any repairs caused by any of the matters described in clause 2.6.2.

2.6.5. The Customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Equipment or any workmanship in relation to it (whether or not involving negligence on the part of Tunstall) shall, in all cases, be limited to repair or replacement. All warranties, conditions and other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

2.6.6. The Customer shall not be entitled to rely on any oral statement or representation (other than where such statement or representation is shown to be fraudulent) made by Tunstall or by Tunstall's employees, agents or servants and the Customer acknowledges that it will only rely on written data and specifications supplied by Tunstall.

2.6.7. Tunstall will provide the Customer with new, rebuilt, refurbished goods as exchange equipment (or part thereof) to replace eligible defective equipment (or part thereof). Rebuilt or refurbished equipment may bear cosmetic blemishes that do not affect performance.

2.6.8. Tunstall does not warrant or guarantee, and is not responsible for:

- (i) Defects, failures, damages or performance limitations caused in whole or in part by (A) power failures, surges, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties, or other events outside of Tunstall's control,
- (B) Customer's or Authorised User's abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorized attempts to repair or alter the equipment in any way, or
- (C) the Customer's use of a SIM Card that has not been provided by Tunstall for use with any Equipment. The Customer must provide qualified technical personnel to maintain and repair the equipment; or
- (ii) Alterations and/or modifications to any part of the Equipment, without Tunstall's express written authorisation.

2.6.9. Equipment may be returned to Tunstall to investigate and identify the root cause of faulty units/devices. Equipment must be returned by the Customer in a suitable condition and not

tampered with. Any units that have been tampered with or have had parts removed will not be covered by the Returns Policy.

2.6.10. The Services do not include the performance of any actions arising from the receipt of alerts generated by the Equipment. IT IS THE RESPONSIBILITY OF THE CUSTOMER TO TAKE SUCH ACTION AS IT SHALL DEEM NECESSARY AS A RESULT OF READINGS FROM THE EQUIPMENT FALLING OUTSIDE OF EXPECTED PARAMETERS. Tunstall shall have no liability arising from the failure by the Customer to take such action or from such action being defective or negligent in any way.

2.7. RETURN OF EQUIPMENT

2.7.1. Where replacement Equipment is to be provided to the Customer in accordance with the terms of this Service Line, the Customer may return the Equipment to be replaced to Tunstall by handing the such Equipment to Tunstall's delivery operative at the time of delivery of the replacement Equipment. Where Equipment is to be returned in this manner, Tunstall's delivery operative will not complete delivery of the replacement Equipment until such time as the Equipment to be replaced has been handed over to the operative.

2.7.2. Before returning or otherwise sending any Equipment to Tunstall, the Customer must obtain a written return authorisation from Tunstall, provide any proof of warranty eligibility requested by Tunstall and comply with Tunstall's returns policy. Any Equipment received by Tunstall without a return authorisation may, at Tunstall's option, be returned to the Customer. Once a return authorisation is obtained, the Customer is responsible for packing and shipping the Equipment to which its warranty claim relates to a service facility designated by Tunstall within twenty one (21) days after receipt of the return authorisation. If the Customer does not return the defective equipment (or part thereof), Tunstall may invoice the Customer for the list price of such equipment (or part thereof), plus applicable shipping. Such failure to return the equipment (or part thereof)

may, in Tunstall's discretion, be grounds for termination of the warranty and/or suspension of any future advance exchange privileges until such outstanding defective equipment has been returned.

3. PROVISION OF MEDICAL DEVICES

3.1 The provision of Equipment includes the supply of Medical Devices by Tunstall to the Customer. In consideration of such supply, the Customer agrees with and undertakes to Tunstall that it shall:

3.1.1 maintain proper records of any Incident, any near Incident or any event serious to the public health and shall allow Tunstall by its own employees or duly authorised agents (which for the avoidance of doubt shall include the supplier of such Medical Devices to Tunstall (the Supplier)) at all reasonable times to inspect and take copies of or extracts from such records;

3.1.2 On the occurrence of any Incident, any near Incident or any event serious to the public health, provide the following information regarding such occurrence to Tunstall as soon as reasonably possible, but in any event within 24 hours of becoming aware of such event:

(A) The following customer details:

1.Name

2.Address

3.Telephone number

4.Email address (where available)

(B) Date the complaint was received

(C) Who the complaint was received by (person/department)

(D) The following product details:

1.Product/device name

2.Model number

3.Product/device serial number (where applicable)

(E) Full and specific details of the complaint; and

(F) Whether the complaint involves a patient injury or death;

3.1.3 not make any report or provide any information regarding an Incident, near incident or event serious to any third party other than in accordance with this clause 3 without the prior written consent of Tunstall; and

3.1.4 for the duration of the Umbrella Agreement, establish and maintain adequate procedures for the performance of its obligations under this clause 3 and make such procedures available for inspection by Tunstall and/or the Supplier when reasonably requested to do so.

3.2. Where the Customer supplies a Medical Device to a third party (whether as a standalone piece of equipment or incorporated or interfaced with any other product or system) the Customer shall ensure that:

(i) it establishes and maintains for the duration of the agreement between the Customer and Tunstall (and for a period of 12 years thereafter) complete records of such devices, including:

(A) The type and description of the device supplied,

(B) The name and address of the relevant third party to whom the device was supplied,

(C) The date of supply,

(D) Whether the device was incorporated or interfaced with any other product or system, and

(E) Any other relevant information; and

(ii) the relevant third party enters into a binding contractual commitment with the Customer placing on the third party the same obligations as those applicable to the Customer pursuant to this clause 3.

4. THIRD PARTY PRODUCTS

4.1. Where a Product is identified as a Third Party in Tunstall's sales catalogue or is otherwise notified to the Customer before an order for such Product is made by the Customer as being a Third Party Product the provisions of this clause 4 shall apply to the supply of such Product.

4.2. To the fullest extent permitted by law, any warranties, representations, conditions and other terms included within the provisions of the Agreement or implied by statute or common law (in so far as they apply to such Third Party Products and their supply to the Customer) shall be excluded from the Agreement, except in so far as they may be provided in the Supply Terms.

4.3. Where the Supply Terms are inconsistent with or conflict with the Umbrella Terms or the terms of this Service Line, the Umbrella Terms or the terms of this Service Line (as the case may be) shall be varied to the extent necessary to resolve or eliminate such inconsistency or conflict and the Supply Terms shall be used to determine the respective rights and duties of Tunstall under the Umbrella Terms and the terms of this Service Line in respect of such inconsistencies or conflicts such that the Supply Terms shall apply to Tunstall's supply to the Customer of such Third Party Products. For the avoidance of doubt, any limits of liability, warranty period or guarantee terms applicable, or indemnities required to be given by Tunstall, under the Umbrella Terms or the terms of this Service Line shall be deemed to have been replaced by any such limits, warranty period, guarantee terms or indemnities contained in the Supply Terms in respect of the supply of the Third Party Products.

5. CHARGES

5.1. The Customer shall pay the charges for the Products set out from time to time in Tunstall's pricing schedule.