

SIM PROVISION



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INTRODUCTION

These terms set out the basis under which Tunstall provides Third Party SIM cards for use in conjunction with its telecare equipment and devices. The SIM card utilises cellular services (including voice data) to allow Tunstall telecare equipment and devices to communicate over mobile communication networks in the absence of a hardwired connection. Tunstall provides access to the connectivity delivered by third parties.

1. INTERPRETATION

1.1. The following definitions shall apply:

Tunstall: Tunstall Healthcare (UK) Limited, (registered office) Whitley Bridge, Yorkshire, DN14 0HR (Company number 01332249).

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

Service: as set out in clause 2.1.

GSM; Cellular connectivity via SIM card.

Contracted Data: access charges to the GSM.

Equipment: any Tunstall telecare equipment or devices which sends or receives data over a cellular connection.

SIM; a removable Third Party *Subscriber Identity Module* supplied by a Third Party that allows use of the Service when used in the Equipment.

Third Party: Any mobile electronic telecommunications network provider and/or mobile electronic telecommunications service provider which has authorised the use of the SIM.

SIM Card End User terms: the terms under which the Third Party allows use of the Service.

2. THE SERVICE

2.1 Access to the Cellular connectivity through the Third Party SIM with Contracted Data which may be preinstalled into the Equipment.

3. SERVICE CONDITIONS

3.1 The Customer has purchased or has agreed to purchase compatible Equipment from Tunstall.

3.2 The Customer has agreed to the terms upon which the Equipment is supplied.

3.3 The Customer agrees to be bound by and adhere to the SIM Card End User terms in relation to use of the SIM with the Equipment where the Customer shall for the purpose of

this agreement stand in the place of Tunstall as the receiver of the supply from the Third Party.

3.4 The specific SIM Card End User terms will vary according to the Equipment purchased by the Customer and are available for inspection upon request.

4. CUSTOMER OBLIGATIONS

4.1 The Customer will not remove the SIM card provided with or for the Equipment.

4.2 The Customer will at all times comply with directions made by any Third Party, Ofcom and will comply with all relevant legislation including the Communications Act 2003 and the Product Security and Telecommunications Infrastructure Act 2022.

4.3 The Customer will ensure compliance with this clause by all users of the Equipment.

5. TUNSTALL RIGHTS

5.1 Tunstall shall be entitled to charge the Customer such amounts and for such periods as may be applicable from time to time for the supply of the Service.

5.2 The Third Party and/or Tunstall may within its discretion set a limit on the amount of data that the Customer may send or receive during any billing period.

5.3 The Customer shall allow Tunstall upon reasonable notice, access to premises, inspection of equipment and upon request, provide Tunstall with all information and data necessary to allow Tunstall to meet all or any of its obligations under the Telecommunications (Security) Act 2021.

6. TUNSTALL WARRANTIES

6.1 The Customer acknowledges that in relation to the Services, Tunstall will be using and relying upon the Third Party and the Service may be affected by circumstances beyond Tunstall's control including termination of supply agreements or events affecting the mobile telecommunications network.

6.2 Where provision of the Service is affected by any circumstances set out in clause 6.1, Tunstall will (in its absolute discretion) pass onto the Customer, where it is able to do so, the benefit of any service level agreement Tunstall may have with any Third Party.

6.3 Notwithstanding the foregoing, Tunstall:

(a) does not warrant that the Customer's use of the Services will be uninterrupted or error free; or that the Services, or the data obtained or transmitted by the Customer through the Services 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, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.4 The SIM supplied for use with the Equipment is supplied under the terms that the Customer;-

6.4.1 acknowledges that the SIM card will remain the property of the Third Party;

6.4.2 acknowledges the Customer's rights to use the SIM card or SIM card number will cease upon termination of this Agreement or termination of the Third Party's agreement with Tunstall.

6.4.3 will not sell, charge or encumber the SIM card;

6.4.4 will immediately inform Tunstall if a SIM card (or Equipment) is lost, stolen, damaged or destroyed, or the Customer becomes aware that the SIM card is being used for a purpose outside of the Service; and

6.4.5 will not use a SIM card for any purpose other than for the purpose of using the Equipment.

7. INDEMNITY

7.1 The Customer will fully indemnify Tunstall for any charges resulting from the misuse of a SIM card or the information contained within a SIM card.

7.2 The Customer shall keep Tunstall indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to wasted costs, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Tunstall as a result of or in connection with any breach or non-compliance with the terms of this Agreement.

8. LIMITATION OF LIABILITY

8.1 Neither Party excludes or restricts in any way its liability under or in connection with the Agreement:

- (a) for death or personal injury caused by its negligence; or
- (b) for fraud or fraudulent misrepresentation; or
- (c) in respect of any other liability that cannot be excluded or limited under any applicable law.

8.2 Subject to conditions 8.1, 8.4 and 8.5, Tunstall's total aggregate liability to the other under or in connection with the Agreement (whether in contract, tort, under statute, misrepresentation or otherwise, including in each case negligence, and whether or not the Party concerned was advised in advance of the possibility of such loss or damage), shall not, in any circumstances, exceed one hundred and twenty five percent (125%) of the total value of the charges paid by the Customer to Tunstall in the calendar year in respect of which the claim arises.

8.3 Subject to conditions 8.1, 8.4 and 8.5, Tunstall shall not be liable to the Customer (whether in contract, tort, under statute, misrepresentation or otherwise, including in each case negligence, and whether or not Tunstall was advised in advance of the possibility of such loss or damage), for:

8.3.1 any of the following types of loss or damage whether direct, indirect or consequential howsoever arising under or in connection with the Agreement:

8.3.1.1 any loss of profits;

8.3.1.2 any loss of sales or revenue;

8.3.1.3 any loss of anticipated savings;

8.3.1.4 any loss of business opportunity;

8.3.1.5 any loss of, or damage to, goodwill;

8.3.1.6 business interruption; or

8.3.1.7 liability to third parties; or

8.3.2 any indirect or consequential loss or damage whatsoever.

8.4 Nothing in this condition 8 or in these terms and conditions shall exclude or limit the Customer's liability to pay (without set off) the charges under the Agreement.

8.5 Each part of this condition 8 operates separately, and if any part of this condition 8 is held by a Court to be unreasonable or inapplicable the rest of this condition 8 shall continue to apply.

8.6 This Condition 8 shall survive expiry or termination of the Agreement.

9. DATA

9.1 The Customer shall own all right, 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.

9.2 If Tunstall processes any personal data on the Customer's behalf when performing its obligations under these terms and conditions, the parties record their intention that the Customer shall be the data controller and Tunstall shall be a data processor and in any such case:

(a) the Customer acknowledges and agrees that the Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Tunstall's other obligations under these terms and conditions;

(b) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to Tunstall so that Tunstall may lawfully use, process and transfer the Personal Data in accordance with these terms and conditions on the Customer's behalf;

(c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(d) Tunstall shall process the Personal Data only in accordance with these terms and conditions and any lawful instructions reasonably given by the Customer from time to time; and

(e) each party shall

(i) comply with all applicable requirements of the Data Protection Legislation. This condition 9.2 (e)(i) is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;

(ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the other party has been obtained and the following conditions are fulfilled:

(A) the transferring party has provided appropriate safeguards in relation to the transfer;

(B) the data subject has enforceable rights and effective legal remedies;

(C) the transferring party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(D) the transferring party complies with reasonable instructions notified to it in advance by the other party with respect to the processing of the Personal Data;

(v) assist the other party, at such party'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; and

(vi) notify the other party without undue delay on becoming aware of a Personal Data breach.

10. TERMINATION AND TERM

10.1 The Agreement shall, unless otherwise terminated as provided in this condition 10.1, commence on the Effective Date and shall continue until:

- (a) either party notifies the other party by giving 60 days' notice of termination, in writing, in which case the Agreement shall terminate upon the expiry of the notice period; or
- (b) otherwise terminated in accordance with the provisions of these terms and conditions; and the period from and including commencement until termination shall constitute the Term.

10.2 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 these terms and conditions which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (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 these terms and conditions has been placed in jeopardy.

10.3 Without affecting any other right or remedy available to it, Tunstall may terminate these terms and conditions with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

10.4 On termination of the Agreement for any reason:

- (a) all rights granted under the Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;

- (c) the Customer shall return to Tunstall the SIM card; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

11. CHARGES & CANCELLATION

11.1 The Customers shall pay the charges for the Service for a minimum period of 12 months or as set out in the proposal document or renewal agreement entered into between the Customer and Tunstall.

11.2 If no such renewal agreement is entered into under clause 11.1, the Service shall automatically renew at the end of 12 months or following the end of the term at Tunstall's rates prevailing at the time.

11.3 If the Service is renewed under clause 11.1 or 11.2, the then current terms available at <https://www.tunstall.co.uk/SIMservice> shall apply to any renewal period and these terms shall be deemed to be replaced by the said terms.

11.4 Any additional SIM cards purchased by the Customer (for whatever reason) shall be deemed to be a separate contract and Tunstall shall be entitled to charge the Customer for the Service at Tunstall's rates prevailing at the time.

11.5 Unless the Tunstall is entitled to a refund under the provider's SIM Card End User terms, Tunstall shall in no circumstances be liable to make any refund to the Customer.

12. FORCE MAJEURE

Tunstall shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under it, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Tunstall or any other party), failure of a utility service or transport or telecommunications 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 suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

13. CONFLICT

If there is an inconsistency between any of the provisions of these terms and conditions and the Schedule of Prices, the Connection Procedure, the Services Description or the Support Services Description the provisions of these terms and conditions shall prevail.

14. VARIATION

No variation of the Agreement or these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

Except as expressly provided in these terms and conditions, the rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

17.1 If any provision (or part of a provision) of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

18.1 The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

18.2 Each of the parties acknowledge and agree that in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Agreement or not) relating to the subject matter of the Agreement, other than as expressly set out in these terms and conditions.

19. ASSIGNMENT

19.1 The Customer shall not, without the prior written consent of Tunstall, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

19.2 Tunstall may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in these terms and conditions or the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or

otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

These terms and conditions do not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

22.1 Any notice, demand or communication in connection with the Agreement shall be in writing and may be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to an email address notified by the receiving party to the sending party for that purpose.

22.2 The notice, demand or communication shall be deemed to have been duly served:

- (a) if delivered by hand, when left at the proper address for service;
- (b) if given or made by prepaid first class post or Special Delivery post, 72 hours after being posted (excluding days other than Business Days);
- (c) if sent by email, where sent before 4:00pm on any Business Day, on the day that the email was sent or, in any other case, on the Business Day following that on which the email was sent.

22.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. GOVERNING LAW

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).