

Service agreement terms and conditions

1. Definitions

In this Agreement the following definitions shall apply:-

- (a) "The Customer" shall mean the person or organisation named as being the Customer.
- (b) "The Company" shall mean Tunstall Australasia Pty Ltd (ACN 059 121 863) whose registered office is situated at Unit 1, 56 Lavarack Ave, Eagle Farm, Queensland 4009 Australia.
- (c) "The equipment" shall mean the equipment specified overleaf.
- (d) "The maintenance service" shall mean the maintenance service as specified in Clause 4 hereof.
- (e) "The monitoring service" shall mean the monitoring service as specified in Clause 5 hereof.
- (f) "The services" shall mean both the maintenance service and the monitoring service.
- (g) "The installation address" shall mean the installation address as specified overleaf.
- (h) "GSM" Global System for Mobile Communications
- (i) "GPRS" General Packet Radio Service is a packet oriented Mobile Data Service available to users of Global System for Mobile Communications (GSM) and IS-136 mobile phones.
- (j) "GPS" The Global Positioning System (GPS) is a space-based satellite navigation system that provides location and time information in all weather conditions, anywhere on or near the Earth where there is an unobstructed line of sight to four or more GPS satellites.
- (k) "SIM" is a small card that contains a mobile network subscriber's account information. This allows the device using the card to attach to a mobile network.

2. Payment

- (a) The Customer will pay all fees without prior demand on the due date.
- (b) The Customer will pay fees whenever the services are provided for part of the period to which that service charge relates.
- (c) The Company reserves the right to amend the amount of fees to take account of changes in the rate of Goods and Services Tax if applicable.
- (d) If any payment under this Agreement is overdue the Customer shall pay interest on the amount due at the rate of 6% per annum above the St George Bank base rate for the time being, from the date the payment fell due, to the date the payment is made.
- (e) Should the Company, in the exercise of its discretion, decide it is appropriate to request that a representative of one of the Emergency Services to attend upon a Customer who has initiated a call to a Tunstall Call Centre, then, if the Company is required by such Emergency Service to pay for the attendance, the Customer agrees to indemnify the Company for the fee paid by it to the Emergency Services.

3. The equipment (rental agreement only)

- (a) The Company shall provide the equipment as specified overleaf for the period specified in this Agreement.
- (b) The equipment remains the property of the Company at all times.

4. The maintenance service (rental and warranty only)

- (a) The Company shall provide the following maintenance service or such other maintenance service as it considers appropriate from time to time in respect of the equipment ("the maintenance service") upon the terms and conditions set out hereafter.
 - i. A remedial maintenance service to maintain the equipment in satisfactory operational condition including the replacement of all unserviceable parts or components. Service response will be given as soon as possible usually within 24 hours of receipt of a service call and will be available seven days a week including public and statutory holidays.
- (b) Except as otherwise provided in these terms and conditions no charge will be made by the Company for this service in respect of labour or parts supplied to replace parts which are defective, faulty or otherwise unserviceable.

5. The monitoring service (if applicable)

The Company shall provide the Customer with the following or such other service and facilities as it considers appropriate from time to time to monitor alarm calls sent by the Customer ("the monitoring service"):

- (a) The Company will provide a continuous service to receive alarm calls sent by the Customer by means of the alarm call facility on the equipment.
- (b) As soon as practicable after it has been received the Company shall relay the alarm call at its discretion to such available person nominated as the Customer's emergency contact or to such available emergency service as the Company considers appropriate.
- (c) The Company may also, at its discretion, supply any body or person so notified with details of the Customer's doctor and/or nominated key holder and/or the personal circumstances and medical conditions of the Customer.
- (d) The Company shall use its discretion on its understanding of the degree of emergency in each case following verbal contact with the Customer

and on the details of the Customer's personal circumstances and medical condition currently supplied to the Company. In exercising its discretion, the Company shall also be entitled to take into account all the relevant information known to it.

- (e) If verbal contact cannot be established with the Customer the Company will treat the alarm call as a request to notify appropriate emergency service.
- (f) The Company will at all times be acting solely as the agent of the Customer in notifying any emergency service or emergency contact and no liability will be accepted by the Company for charges made by an emergency service or emergency contact following a request for assistance by the Company pursuant to an alarm call.
- (g) The Company's obligations under the monitoring service shall under no circumstances extend beyond the obligation to receive and relay alarm calls as set out above and the Company shall not be liable directly or indirectly for the failure of any third party (e.g. any emergency service, emergency contact, key-holder or doctor, or any telephone service provider) to respond appropriately when notified of the alarm by the Company.
- (h) Where the company provides a SIM, but makes no guarantee concerning GSM, GPS and/or GPRS coverage, availability, reliability and service delivery and accepts no liability for any loss or injury resulting from GPS, GSM and/or GPRS service issues.
- (i) The Company will treat all information received by it in relation to the Customer's key-holder, emergency contacts or emergency service in connection with the operation of the monitoring service as confidential.
- (j) The Company adheres to the National Privacy Principles and will protect the individual's right to privacy.

6. The Customer's responsibilities

- (a) The Customer will observe the Company's operating instructions for using the equipment and will not use the rental equipment except as specified therein.
- (b) The Customer shall keep the rental equipment free from any and all damage, defect, fault or other failure which is caused by any circumstances other than fair wear and tear including but not limited to:
 - i. All causes beyond the Customer's control such as changes in electrical power or operating environment, accident, fire, theft, and water damage.
 - ii. Damage, defect, fault or other failure caused by the use of the Equipment in conjunction with additions, accessories or attachments not supplied by the Company.
 - iii. Damage, defect, fault, or other failure caused by the negligence of the Customer, or improper use.
- (c) The Customer shall request the maintenance service of the Company as soon as practicable after any damage, defect, fault or other failure in the Equipment has been noticed and shall not allow any person other than an employee or agent of the Company to adjust, alter repair, deface or interfere with the equipment in any way.
- (d) The Customer shall not abuse or permit any person to abuse:-
 - i. The SIM card, attempt to remove from the equipment or use the SIM card for any other purposes.
 - ii. The maintenance service. In particular shall not make unnecessary service requests or cause a service visit to be aborted by not providing access to the equipment at the time the Company calls pursuant to a request for maintenance services.
 - iii. The monitoring service by making persistent calls without reasonable cause.
- (e) The Company will be entitled to charge the Customer for any loss or damage and/or failure to return the equipment upon termination of this Agreement.
- (f) The Customer shall keep the Company fully informed as to any new or continuing medical condition and/or treatment of the Customer and to any changes therein.
- (g) The Customer shall notify the Company of any details it requests concerning the emergency contacts, key-holders and doctors who may be contacted by the Company under the monitoring services in an emergency and to any changes therein. The Customer shall ensure that person(s) nominated as emergency contacts, key-holders and doctor are aware that they have been so named and are in agreement with their name being used for this purpose.
- (h) The Customer shall notify the Company of any change to the installation address of the Equipment.
- (i) Where an extension telephone line exists at the Customer's residence the Equipment should be connected to a safe socket or Mode 3 socket by Australian Standard AS 4607-1999.
- i. In the event that the Equipment is connected to an existing standard telephone socket and not to a safe socket or Mode 3 socket as required by Australian Standard AS 4607-1999 and an extension telephone is off the hook, the monitored telephone will not have a priority line to the Company's monitoring centre and the Customer accepts the risk that the monitoring of the Customer's telephone may fail and the call for help may not be received.

- ii. The Customer further accepts that the Company and its officers, employees, agents and contractors will not be liable for any failure of the monitoring centre as a result of this equipment not being connected to a safe socket or Mode 3 socket.

7. Breach by the customer

Without prejudice to Clause 9 hereof, if the company is unable to obtain access to the equipment or the relevant premises for any purpose or if the Customer is in any other way in breach of any of the terms and conditions of this Agreement, the Company reserves the right to withhold or terminate the maintenance service and monitoring service or reclaim the equipment provided under this Agreement, or to levy such charge as is currently in force from time to time for any maintenance service or monitoring service provided thereafter, which charges shall be paid by the customer within 14 days of the date of the Company's invoice.

8. Termination

- 8.1 The company may terminate this Agreement forthwith if the Customer:-
 - (a) Has made any material misstatement in the particulars supplied to the Company from time to time; or
 - (b) Fails to comply with any of the terms of this Agreement; or
 - (c) Has a receiving order in bankruptcy made against him or otherwise agrees to a scheme of arrangement with his creditors; or
 - (d) Abandons the equipment; or
 - (e) Provides a written notice to terminate within 30 days

8.2 In the event of the company becoming entitled to terminate this Agreement (under Clause 8 hereof) or in the event of the wrongful termination of this Agreement by the customer, the company shall be entitled on demand to the payment of the following sums:-

- (a) All sums outstanding under the terms of the Agreement at the date of termination.
- (b) All sums payable for the remainder of the current month.
- (c) All sums payable in respect of any breach by the Customer of the terms of this Agreement.
- (d) All sums payable for the replacement of the rental equipment if it cannot be reclaimed.

9. Rights of entry

The customer will permit the Company's employees and agents to enter the premises where the rental equipment is or may reasonably be believed to be situated at all reasonable times on reasonable notice to inspect, repair, adjust or service the rental equipment.

10. Telephone recording

The Customer agrees to, and is aware of, the recording of all incoming and outgoing telephone communications made to and from the monitoring service in relation to the provision of the service.

11. Limitation of liability

- 11.1 The Company shall not be liable for any failure or delay providing the services including parts or components for the equipment where such failure or delay is caused by:-
 - (a) The Customer's failure to notify the Company of any changes concerning the personal contacts or emergency contacts, key-holders or doctors to be contacted in the event of a call.
 - (b) Any other breach of the terms and conditions of this Agreement by the Customer.
 - (c) Act of God, war, civil disturbances, strike or other labour dispute, storm, fire, flood, shortage of material, law, act or order of government or agency thereof, or other cause or circumstance beyond the company's control including, but not limited to any third party provider.
- 11.2 Except for any liability which it may incur for death or personal injury resulting from the negligence of the Company, the Company shall not be liable in any manner whatsoever whether in contact or misrepresentation or otherwise for any direct, indirect or consequential loss, damage, injury or death howsoever caused which may arise out of or in connection with the service to be provided under this Agreement.

12. General

- (a) This Agreement is made with the Customer and the Customer shall not at any time assign, pledge, mortgage, transfer or otherwise dispose in whole or in part of any or all the rights under this Agreement. The Company may at any time assign, pledge, mortgage, transfer or otherwise dispose in whole or in part of any or all the rights under this Agreement.
- (b) No employee or agent of the Company is authorised to make any alterations to these Terms and Conditions or to waive or vary the same.
- (c) Any time or other indulgence granted by the Company to the Customer shall not affect the strict rights of the Company under this Agreement.

13. Warranty

- (a) The Company warrants that it will (at the Company's discretion) repair or replace any equipment which are accepted by the Company as being defective or not in accordance with the Agreement or any express description or representation given or made by or on behalf of the Company in respect of the equipment within a period of 12 months on device from dispatch of such equipment from the Company's works ("warranty period") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third parties where the Customer's only remedy will be against that third party.
- (b) 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 them (whether or not involving negligence on the part of the Company) shall, in all cases, be limited to repair, replacement, re-performance of the equipment as foreshadowed and any condition or warranty implied by law shall cease to apply after the expiry of the Warranty Period; and the Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or installation or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other delivery or installation or any part of the same, delivery or installation.
- (c) The Company accepts no liability in respect of any defect in or failure or malfunction of any equipment or services supplied or for any loss, injury or damage attributable, directly or indirectly thereto where such is caused in whole or in part by:
 - i. The repair, adjustment and/or alteration of the equipment supplied by anyone other than the Company without prior written consent of the Company; or
 - ii. The installation, maintenance and/or operation of the equipment supplied otherwise than in strict accordance with the instructions accompanying the same; or
 - iii. The use of any equipment in conjunction with the equipment supplied where such equipment is manufactured by some person other than the Company.

- (d) The Customer shall not be entitled to rely on any oral statement or representations made by the Company or its employees, agents or servants and the Customer acknowledge that it will only rely on written data and specifications supplied by the Company.
- (e) Except as provided in (a) and (b) above, all representations, guarantees, undertakings, conditions or warranties, expressed or implied, statutory or otherwise in relation to the Equipment are hereby expressly excluded, provided always that the statutory rights of the Customer, in the case of a consumer sale, shall remain in full force and effect.
- (f) In the event that equipment is returned to the Company from the Customer for warranty repair and is found to be in working order within the herein described specifications, then the Company shall notify the Customer of such. If operational equipment continues to be returned to the Company, then the Company reserves the right to impose reasonable charges that the Customer shall pay to the Company as an inspection and testing fee. This fee shall be due and payable immediately upon invoice. Service performed by the Company pursuant to this section 13(f) shall be billed to the Customer at the Company's standard rates and charges in effect at the time that such servicing is performed.
- (g) Any evidence of misuse, abuse or tampering with the equipment shall void the warranty in its entirety.
The Customer shall, prior to the return of any equipment for any cause, notify the Company of the intended return and mark such equipment (or containers of said equipment) with a Non-Conformity Report Form as supplied by the Company.

14. Privacy

- (a) Tunstall assures you that your confidential personal information will only be used for the purpose for which you have provided it. It will not be provided to any person or agency without your consent or that of your legally designated representative. If you have any further queries or would like a copy of our privacy policy please contact your local Tunstall office or email the Privacy Officer: APAC.privacy@tunstall.com Information collected on this form is to enable Tunstall to provide a personal emergency response service. You are welcome to contact Tunstall on 1800 603 377 to update your details at any time.