



## **TOUCHSTONE END USER LICENSE AGREEMENT (EULA)**

### **TOUCHSTONE SOFTWARE TERMS OF USE LICENSE AGREEMENT FOR CLOUD-BASED SUBSCRIPTION**

**BEFORE USING THE SYSTEM, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THESE TERMS.**

By registering as a User or otherwise accessing or using the System, you also represent that you have the legal authority to accept the Terms on behalf of yourself and any party you represent in connection with your use of the System. If you do not agree to the Terms, you are not authorized to use any Services. If you are an individual who is entering into these Terms on behalf of an entity, you represent and warrant that you have the power to bind that entity, and you hereby agree on that entity's behalf to be bound by these Terms, with the terms "you," and "your" applying to you, that entity, and other users accessing the Services on behalf of that entity.

You represent, warrant, and agree that no Content posted or otherwise shared by you on or through any of the Services ("Your Content"), violates or infringes upon the rights of any third party, including copyright, trademark, privacy, publicity, or other personal or proprietary rights, breaches or conflicts with any obligation, such as a confidentiality obligation, or contains libelous, **IF YOU USE THE SYSTEM OUTSIDE OF THE TERMS AND CONDITIONS HEREIN, OR IN VIOLATION OF AEGIS'S PRIVACY POLICY, YOUR ACCESS WILL BE PROHIBITED.**

This is an End User Agreement (Agreement and any Exhibits) between AEGIS.net, Inc., (AEGIS) and the End User (LICENSEE or USER – terms may be used interchangeably) of the software system and website, "Touchstone

Project" (TOUCHSTONE), under which AEGIS is licensing the use of the TOUCHSTONE cloud software on a non-exclusive basis for use, under the terms and conditions stated below.

The Open subscription, provided for free, is intended to allow an organization the opportunity to have a single representative user validate the usability of the system to support various activities such as test-driven development (TDD), quality assurance (QA) testing, pre-production testing support of products and ultimately implementation support during deployment. All System users are required to identify an organizational relationship with Touchstone. Whether individual (organization identified as 'self') or part of a corporate entity. Licensees must identify which organization they represent by registering in Touchstone as the organization they are representing. Registered Touchstone users found using fictitious organizational names or organizations they do not officially represent could have their access suspended or revoked.

**1) LICENSE GRANT:** The rights granted under this Agreement are effective as of the date this Agreement is distributed, upon registration by a User or Licensee. AEGIS hereby grants to Licensee a limited, non-exclusive, non-transferable license to use the Touchstone Licensed Cloud based Software (SOFTWARE) and the API Continuous Integration product (Software) for internal testing purpose only. AEGIS reserves the right to inactivate any Open/Free lane Licensee Touchstone account at its sole discretion.

**2) LIMITED WARRANTY:** AEGIS warrants that, for the duration of the subscription from the date of acquisition, the Software, if operated as directed, will substantially perform in accordance with its documentation. AEGIS does not warrant, however, that Licensee's use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. AEGIS does not warrant the accuracy or reliability of any test script resources, test cases or test data entered by Licensee using the Software, nor does AEGIS warrant any product generated by Touchstone based upon the test cases or test data entered by Licensee. In addition, the security mechanisms implemented by the System have inherent limitations, and Licensee must determine that the System sufficiently meets Licensee's requirements. AEGIS does not warrant, take responsibility, or assume liability, for errors or disruption caused by viruses.

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Individuals in the UK (United Kingdom), the EU (European Union) or the EEA (European Economic Area) may have certain rights regarding collection, transfer, use, storage or processing of their personal information by virtue of General Data Protection Regulation (GDPR) or the UK Data Protection Act (DPA). Information processed solely in the United States may not offer the same level of protection as foreign privacy laws, however, the Federal Trade Commission (FTC) Act works in tandem with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to protect sensitive information from being disclosed without the individual's consent. AEGIS observes

the laws of the applicable jurisdiction, including state Consumer protection requirements, such as the California Consumer Privacy Act (CCPA). In compliance with HIPAA, the Touchstone team shall follow its internal process to remediate any such incidents of which it becomes aware.

### **3) SCOPE OF LICENSE GRANT:**

By providing AEGIS your information, you acknowledge the transfer, storage and use of the information.

#### **LICENSEE MAY:**

3.1) Use and execute the Software in a public cloud assessable via <http://www.touchstone.com> or <http://touchstone.aegis.net>.

3.2) Publish copies of the Software test results, and conformance reports for marketing, or archival purposes, provided the copy contains all of the original Software's proprietary notices (or recognition as being produced by AEGIS Touchstone).

3.3) Disclose Confidential Information and Software access to those of Licensee's employees who have a "need to know", but only if Licensee take reasonable precautions to protect Confidential Information from further disclosure by such employees. Reasonable precaution shall include, at a minimum, the same precautions used by Licensee to protect Licensee's own confidential and proprietary information and trade secrets.

3.4) Report in writing to AEGIS any known illegal use or access to the Software by a third party, and give reasonable assistance to AEGIS in the investigation and prosecution of such suspected illegal use.

In order to ensure Touchstone's compliance with HIPAA,

#### **LICENSEE MAY NOT:**

3.5) Store, retain or exercise any test execution with Touchstone that includes real patient data, protected health information (PHI), or personally identifiable information (PII), or synthetic data that is protected under an Organizational Intellectual Property (IP) Act. Testing and Test Data shall exclusively rely on open access dynamic, synthetic or sample data. A separate Software Agreement, product installation, and appropriate security lockdown and systems hardening procedure must be followed should the Licensee require an on-premise installation of Touchstone in order to conduct production (live data) surveillance.

3.6) Permit the right to use of this Software to any person or entity that is not an authorized user or employee of Licensee (THIRD PARTY).

3.7) Distribute, transfer, disclose, display or otherwise make available to others Confidential Information, except as permitted above.

3.8) Reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from any of the Software.

3.9) Sell, rent, lend, lease, copy, sublicense, assign, grant a security interest in, or otherwise transfer rights to the software, except to the extent provided above, or remove any proprietary notices or labels on the Software.

3.10) Take any steps to modify, replace or remove any Touchstone-provided source files which would remove or otherwise alter the Touchstone branding or logo, accept where specifically allowed via a documented feature.

**4) TITLE:** Title to, and ownership of, the Software, and all copies thereof, shall at all times reside with AEGIS. The Software is being built as part of the AEGIS Developers Integration Lab (DIL), protected by United States Patent Publication number US 9,354,998 B2, copyright law, and international treaty provisions. Licensee acknowledges that it obtains no ownership rights to the licensed Software under the terms of this Agreement. All rights to the Software, including, but not limited to, Confidential Information, trade secrets, trademarks, service marks, patents, and copyrights are, and will remain the property of AEGIS. AEGIS also retains ownership and publishing rights to summary test execution (test case) data, including, but not limited to, statistics (Organizations' identities will not be externally reported). All copies of the Software delivered to Licensee, or made by Licensee, remain the property of AEGIS, including Licensee Work or Conformance Test Results.

**5) SOFTWARE CONFIDENTIALITY/CONFIDENTIAL INFORMATION:** Licensee acknowledges and agrees that the Software is a valuable and unique asset of AEGIS, which contains Confidential Information and trade secrets of AEGIS. Confidential Information shall mean the Software and related documentation (text describing the installation and use of the Software) provided by AEGIS to Licensee. Confidential Information shall at all times remain the sole and exclusive property of AEGIS.

**6) ENCRYPTION:** System operates under the following security measures: If the Software contains cryptographic features, Licensee may wish to obtain a signed digital certificate from a certificate authority or a certificate server in order to utilize certain cryptographic features. Licensee may be charged additional fees for certification services. Licensee is responsible for maintaining the security of the environment in which the Software is used and the integrity of the private key file used with the Software. In addition, the use of digital

certificates is subject to the terms specified by the certificate provider, and there are inherent limitations in the capabilities of digital certificates. If Licensee is sending or receiving digital certificates, Licensee is responsible for familiarizing itself with, and evaluating, such terms and limitations.

**7) TERM AND TERMINATION:** This Agreement is effective retroactive to the date on which the Software was initially furnished to Licensee or accessed by Licensee and shall continue thereafter unless earlier terminated as set forth in this section. Violation of this Agreement will result in immediate denial of System access until resolved.

7.1) Either party may terminate this Agreement for the material breach of any term by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such material breach from the non-breaching party. Notice shall describe in reasonable detail the nature of the breach.

7.2) Either party may terminate this Agreement immediately upon written notice to the other party in the event that such other party (a) becomes insolvent or makes an assignment for the benefit of creditors; (b) files, or has filed against it, any petition under any bankruptcy Title of the United States Code, or under any applicable bankruptcy, insolvency, reorganization, or similar debtor relief law which is not discharged within sixty (60) days of filing; or (c) requests or suffers the appointment of a trustee or receiver, or the entry of an attachment or execution as to a substantial part of its business or assets.

7.3) Upon termination of this Agreement, Licensee's license to use the Software shall terminate, and Licensee shall abide by applicable Confidential Information requirements relating to the Software. Licensee shall promptly certify, in writing, to AEGIS that it has complied with this requirement.

7.4) Upon termination of this Agreement, Licensee shall pay AEGIS all fees due through the effective date of such termination. Unless otherwise specified herein, or otherwise agreed in writing, or in the event of termination of this Agreement by Licensee pursuant to section above, all fees collected or accrued prior to the date of termination shall be retained by AEGIS without any pro rata refund to Licensee.

7.5) The termination of this Agreement shall not extinguish any rights or obligation of the parties relating to protection of Confidential Information.

**8) EXPORT:** Licensee acknowledges that the laws and regulations of the United States may restrict the export and re-export of certain commodities and technical data of United States origin, including the Software in any

medium, or Software Appliance and associated hardware. Licensee agrees that it will not export or re-export the Software or Software Appliance in any form, other than in compliance with any applicable laws and regulations.

**9) INDEMNITY:** AEGIS, at its own election and expense, will defend and indemnify LICENSEE with respect to any action brought against LICENSEE for a claim that the use of Software infringes any patent, copyright, trade secret or other proprietary right, provided that LICENSEE gives prompt written notice to AEGIS of any such claim, assists in the investigation, defense, and settlement thereof at AEGIS's expense, and allows AEGIS to control the defense of all such claims, lawsuits or other proceedings. If the Software is, or in AEGIS's opinion may become, the subject of any infringement claim, or is determined by a court to infringe an intellectual property right and its use is enjoined, AEGIS shall, at its sole option and expense, either: (a) procure for LICENSEE the right to use such Software; (b) replace or modify the Software in such a way that it will not constitute an infringement; or (c) terminate this Agreement and provide a pro rata refund of the pre-paid fees to LICENSEE for such infringing Software.

**10) CONSEQUENTIAL DAMAGES WAIVER:** UNDER NO CIRCUMSTANCES SHALL AEGIS BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES UNDER THIS AGREEMENT OR ITS TERMINATION, IRRESPECTIVE OF WHETHER AEGIS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

**11) LIMITATION OF LIABILITY:** IN NO EVENT SHALL AEGIS'S LIABILITY TO LICENSEE FOR DAMAGES FOR ANY ACTION OR CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY LICENSEE TO AEGIS UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM AEGIS'S NEGLIGENCE OR INTENTIONAL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, SUCH LIABILITY IS LIMITED TO INSURANCE COVERAGES AND LIMITS IN AEGIS'S CORPORATE INSURANCE POLICY.

**12) HIGH RISK ACTIVITIES:** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as cloud based, or on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct medical or life support machines, or weapons system, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage (HIGH RISK ACTIVITIES). AEGIS SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

**13) FUTURE RELEASES:** Licensee will receive future notifications of cloud based release(s) of new Software that Licensee uses, Licensee has acquired the rights to use the cloud based Software and is required to use the public version. AEGIS reserves the right to implement security measures, such as 2-factor authentication, in order to improve security for the Touchstone user community. The terms and conditions of this Agreement shall govern licensee's use of any future versions provided to Licensee by AEGIS.

**14) U.S GOVERNMENT USERS:** The Software is deemed to be a "commercial item," as that term is defined in 48 CFR §2.101, consisting of "commercial computer software", "commercial computer hardware", and "commercial computer software documentation," as defined or used in 48 CFR §2.101 - Definitions and also in 48 CFR §12.212 Computer Software. Consistent therewith, as well as with Federal Acquisition Regulation (FAR) 48 CFR Subpart 227.72 Rights in Computer Software and Computer Documentation, in particular: 48 CFR §227.7202-1 Policy; 48 CFR §227.7202-3 Rights in commercial computer software or commercial computer software documentation; and 48 CFR §227.7202-4 Contract clause, all U.S. Government users acquire the Software with only those rights set forth herein, notwithstanding any contrary provision in any prime contract or subcontract.

**15) GOVERNING LAW:** This Agreement shall be governed by and construed and enforced under the laws of the United States of America and the Commonwealth of Virginia, excluding conflict of law provisions (except to the extent applicable law, if any, provides otherwise). The system of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**16) DISPUTE RESOLUTION:** Any controversy, claim or dispute arising out of or relating to this Agreement, or any breach, termination or invalidity thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"), and judgment upon any award



rendered may be entered into any court having proper jurisdiction. In accordance with such Rules, each party shall designate one arbitrator, and these two arbitrators shall designate a third arbitrator. The place of arbitration shall be in Northern Virginia. The arbitrator shall be authorized to award costs, fees and expenses (including reasonable attorney's fees) to the prevailing party. Nothing in this section shall limit either party's right to pursue injunctive or other equitable relief.

**17) ASSIGNMENT:** Neither party may assign this Agreement to any third party without the express written consent of the other party, except that either party may, upon written notice to the other, assign this Agreement to a company that controls, is controlled by, or under common control with such party. For the purposes of this Agreement, the following transactions relating to the parties shall not be deemed an assignment of the Agreement and shall not give rise to any requirement of approval or consent by any party to this Agreement: any merger (including, without limitation, a re-incorporation merger), consolidation, reorganization, stock exchange, sale of stock or substantially all of the assets of the party or other similar or related transaction in which AEGIS or Licensee, as applicable, is the surviving entity, or if not the surviving entity, the surviving entity continues to conduct the business conducted by such party prior to consummation of the transaction.

**18) ATTORNEY'S FEES:** In the event either party brings any proceeding or lawsuit in connection with this Agreement, each party shall be responsible for, and pay, its own costs, expert witness fees, and attorneys' fees, including costs and fees on appeal.

**19) FORCE MAJEURE:** Each parties' performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, war or other hostility, civil disorder, unusually severe weather, fire, explosion, power failure, and industrial or labor dispute. Neither party shall be liable to the other for failure or delay in performing its obligations under this Agreement when such failure or delay is due to unforeseeable events or causes beyond the control of the party concerned, including acts of God or nature, governmental orders or restrictions. The parties will use reasonable commercial efforts to mitigate the effect of a force majeure event.

**20) EXHIBITS:** Exhibit A, TOUCHSTONE TECHNICAL SUPPORT, is hereby incorporated by reference into this Agreement.

**21) This Agreement**, including any Exhibits, represents the complete and exclusive agreement of the parties concerning its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, written and oral, regarding the subject matter hereof. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of AEGIS and Licensee by their duly authorized representatives.

**THE ACCEPTANCE OF ANY PURCHASE ORDER PLACED BY LICENSEE IS EXPRESSLY MADE CONDITIONAL ON LICENSEE'S ASSENT TO THE TERMS SET FORTH HEREIN, AND NOT THOSE IN LICENSEE'S PURCHASE ORDER, WHICH AGREEMENT TERMS SUPERSEDE AND CONTROL OVER ANY CONFLICTING TERMS IN LICENSEE'S PURCHASE ORDER.**

## EXHIBIT A: TOUCHSTONE TECHNICAL SUPPORT

### 1.) PURPOSE

To provide access Monday through Friday (excluding US Federal Holidays) during normal business hours (8:30 a.m. - 5:30 p.m. Eastern Time) for the resolution of technical issues related to the operation of the software. The preferred method for reporting a technical support case is to email details of the issue or problem to [Touchstone\\_Support@aegis.net](mailto:Touchstone_Support@aegis.net).

### 2.) DEFINITIONS

2.1 Support Case: Reported discrete problem, issue or question requiring analysis, research and/or programming to correct a problem.

2.2 Response Time: The time between the receipt by Touchstone Customer Service Team of a technical support e-mail message and the Touchstone Team first contacting the subscriber to confirm the issue, problem or question that initiated the email.

2.3 Resolution Time: The time between the receipt by Touchstone Customer Service Team of a customer e-mail message to Touchstone Support and provision of a solution to the customer.

2.4 Issue Acuity Levels: These guidelines are used to rate the severity of the support case.

- 1) Test System Down: Product unusable resulting in total disruption or business impact
- 2) Major Failure: Test Operations severely restricted, no convenient work around
- 3) Failure: Test Product does not operate as designed, minor impact on usage
- 4) Issue: Enhancement request and/or documentation error

2.5 Priority Support Level: These guidelines are used to rate priority in the Touchstone support queue.

- 1) Program and Enterprise Subscribers
- 2) Project Level Subscribers
- 3) Open and Starter Subscribers

### 3.) SERVICE LEVEL AGREEMENT

3.1 When an email is sent to [Touchstone\\_Support@AEGIS.net](mailto:Touchstone_Support@AEGIS.net) a Support Case is opened, a member of the Touchstone support team will use both the Issue Acuity Level and the subscriber's Priority Support Level to prioritize the Support Case. Prioritization of Support Cases may impact Response Time and / or Resolution Time.

3.2 All support cases will receive an acknowledgement response via email from Touchstone Support within 8 Business Hours. Within 24 Business Hours users will be provided issue resolution in the form of a work around or software patch.

3.3 Escalation Procedures: In the very rare event that subscriber does not receive support as outlined above, please forward your original support ticket to your AEGIS primary point of contact and copy support so that we can escalate accordingly.