

Touchstone Life Care™ End Services User Agreement

WARNING: Use of Touchstone Life Care™ Services is conditional upon you and any organisation purchasing these services on your behalf (jointly and severally “the ACP Customer”) agreeing to the terms of this Agreement. Choosing “I accept the terms and conditions of this Agreement” when creating your account and ordering goods and services shall be deemed to be your acceptance of the terms of this Agreement.

1. Definitions

1.1 In this Agreement, unless inconsistent with the context:

- (a) ACP Customer Data means information which relates solely to ACP Customer
- (b) Agreement means this agreement, its recitals, provisions and any schedule of this agreement.
- (c) Clause means a clause of this Agreement.
- (d) Confidential Information includes information which relates to Touchstone Life Care™ Services including account details, passwords and activation codes.
- (e) Duration means the period for which you or the organisation that purchased your rights to use the Touchstone Life Care™ Services has paid for same.
- (f) Fees means either the agreed fees of Touchstone Life Care™ or, if none, the published fees of Touchstone Life Care™ as amended from time to time.
- (g) Force Majeure means an act, omission or circumstance over which Touchstone Life Care™ could not have reasonably exercised control including telecommunication failures.
- (h) Intellectual Property Right includes any right arising from or capable of arising from the: Circuits Layout Act 1989 (Cth); Copyright Act 1968 (Cth); Designs Act 2003 (Cth); Patents Act 1990 (Cth); Trade Marks Act 1995 (Cth); any similar legislation outside the Commonwealth of Australia; any similar unregistered right and Confidential Information.
- (i) Interest Rate means the rate of 5% per annum calculated monthly in arrears and added to the outstanding sum.
- (j) Party and Parties means a party to this Agreement and their respective successors, trustees and permitted assigns.
- (k) Privacy Policy means Touchstone Life Care™'s Privacy policy which can be found at <https://www.touchstonelifecare.com/privacy-policy>
- (l) Touchstone Life Care™ means Touchstone Life Care Pty Ltd ABN 85 626 986 409.
- (m) Touchstone Life Care™ Services means the services made available on the Touchstone Life Care™ website or otherwise set in a written offer from Touchstone Life Care™.

(n) Sub-clause means a sub-clause of this Agreement.

(o) Taxes includes taxes, duties and government charges, fees, levies, any penalty for not paying same and any liability for same.

2. Interpretation

2.1 In this Agreement, unless inconsistent with the context:

(a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.

(b) Words denoting the singular number shall include the plural number and vice versa.

(c) Words denoting any gender shall include all other genders.

(d) A reference to a statute or a regulation also refers to any statute or regulation amending, consolidating or re-enacting same.

(e) A reference to "includes", "including" or "inclusive" is to be construed as being a reference to "includes, without limitation", "including, without limitation", and "inclusive, without limitation" respectively.

(f) Headings used in this Agreement are for convenience and ease of reference only and are not part of this Agreement and shall not be relevant or affect the meaning or interpretation of this Agreement.

(g) Every obligation expressed or implied into this Agreement and entered into by more than one Party shall bind them jointly and severally.

(h) Every right expressed or implied into this Agreement granted in favour of more than one Party shall be for the benefit of each of them jointly and severally.

(i) A provision of this Agreement shall not be construed adversely to the Party that drafted it.

(j) If any provision or part provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.

(k) The recitals, provisions and any schedule to this Agreement form part of this Agreement.

(l) No right or remedy granted to Touchstone Life Care™ pursuant to this Agreement excludes or shall be deemed to exclude or modify any other right or remedy which would otherwise be available to Touchstone Life Care™ and all such granted rights and remedies are cumulative.

3. ACP Customer's Right to Use Touchstone Life Care™ Services

3.1 Subject to the terms of this Agreement Touchstone Life Care™ grants ACP Customer a revocable non-exclusive right to use Touchstone Life Care™ Services for the Duration solely for ACP Customer's own use.

3.2 Touchstone Life Care™ shall, from time to time, provide access codes to permit ACP Customer to use Touchstone Life Care™ Services.

4. Responsibilities

4.1 ACP Customer shall:

- (a) keep ACP Customer's user accounts, passwords and activation codes details confidential and not disclose same to any other party. Should any such disclosure occur ACP Customer shall report same to Touchstone Life Care™ in writing as soon as possible;
- (b) provide information as reasonably requested by Touchstone Life Care™ and the Suppliers and its contractors and agents from time to time;
- (c) provide equipment which Touchstone Life Care™ considers suitable to use Touchstone Life Care™ Services;
- (d) agree to and comply with the terms and conditions of any third party software or services supplied by Touchstone Life Care™ or made available with Touchstone Life Care™ Services and or not use such third party Services.
- (e) comply with all applicable laws;
- (f) conduct all appropriate virus and security checks;
- (g) immediately advise Touchstone Life Care™ in writing upon ACP Customer becoming aware of any person using Touchstone Life Care™ Services who is not authorised by Touchstone Life Care™ to do so;
- (h) pay the Fees specified in an invoice;
- (i) train its staff in the use of Touchstone Life Care™ Services and the internet.
- (j) ensure that its employees, sub-contractors and other agents who have authorised access to Touchstone Life Care™ Services are made aware of the terms of this Agreement;
- (k) supervise and control the use of Touchstone Life Care™ Services in accordance with the terms of this Agreement.

4.2 ACP Customer shall not:

- (a) copy, reproduce, translate, adapt, vary, modify, decompile, disassemble, reverse engineer, create derivative works of, sub-license, rent, lease, loan or distribute Touchstone Life Care™ Services other than as expressly authorised by this Agreement;

- (b) engage in password sharing, remote desktop access or port aggregation without the express permission of Touchstone Life Care™;
- (c) interfere with the network or disrupt any other user, service or equipment;
- (d) permit any act which infringes the Intellectual Property Rights which subsist in Touchstone Life Care™ Services and which belong to Touchstone Life Care™.
- (e) provide or otherwise make available Touchstone Life Care™ Services in any form to any other person;
- (f) use Touchstone Life Care™ Services for any illegal, unauthorised or dangerous purpose including unsolicited commercial e-mail;
- (g) use Touchstone Life Care™ Services for or in connection with a service bureau operation;
or
- (h) use Touchstone Life Care™ Services to publish any material for which it is not the Intellectual Property Right owner or licensed by the Intellectual Property Right owner or is defamatory.

5. Touchstone Life Care's rights

5.1 Touchstone Life Care™ may, whilst being under no obligation to do so and at its sole discretion, without notice or giving any reason or incurring any liability for doing so:

- (a) take action if it suspects that malicious, illegal or unacceptable usage of Touchstone Life Care™ Services is occurring or has occurred, including destruction or disposal of ACP Customer's access passwords.

6. Disclaimer & Acknowledgments

6.1 ACP Customer acknowledges that:

- (a) They will obtain medical advice in relation to their particular circumstances in relation to any Care Plan supplied by Touchstone Life Care™ before using any such Care Plan;
- (b) Touchstone Life Care™ Services are licensed on the strict understanding that, subject to the warranties below, Touchstone Life Care™ is not responsible for the results of any actions taken, either by ACP Customer or a third party relying on services supplied or not supplied by Touchstone Life Care™ Services;
- (c) Touchstone Life Care™ cannot and does not warrant that Touchstone Life Care™ Services shall be available 24 hours a day or that any defect shall be corrected within a specific time frame;
- (d) Touchstone Life Care™ Services are not necessarily secure, virus free or without defect;
and
- (e) Touchstone Life Care™ is not responsible for:

- (i) ensuring that Touchstone Life Care™ Services or any plan produced using same is suitable for ACP customer's requirements or fit for any purpose;
- (ii) any interruption to Touchstone Life Care™ Services due to equipment failure, the need for routine maintenance, peak demand etc. ;
- (iii) the supply or maintenance of ACP Customer's equipment, software or communication facilities;
- (iv) monitoring, controlling or ensuring the accuracy, appropriateness or content of any information on the internet and does not do so; and
- (v) any software available on the internet or supplied by third parties.

7. Support

7.1 Touchstone Life Care™ may, from time to time, make available various support services (Premium and Premium Plus as selected from time to time) and other assistance in relation to Touchstone Life Care™ Services. Any rebate supplied for such services shall be applicable as a credit only to any fees payable by you and is not payable in cash.

8. Intellectual Property Rights

8.1 Touchstone Life Care™ retains all the Intellectual Property Rights in Touchstone Life Care™ Services.

8.2 ACP Customer may from time to time at its sole option upload or make materials to use with Touchstone Life Care™ Services for ACP Customer's own use. ACP Customer hereby grants Touchstone Life Care™ an irrevocable worldwide royalty free licence to all the Intellectual Property Rights subsisting in those materials to the extent necessary for each of those purposes including the right for Touchstone Life Care™ to grant sub-licences to its ACP Customers for same.

9. Confidential Information

9.1 To the extent that Confidential Information is not in the public domain (other than by way of breach of this Agreement) and is not known by the ACP Customer at the time of disclosure, ACP Customer:

(a) shall:

- (i) keep such information confidential;
- (ii) take all necessary precautions to prevent any disclosure of Confidential Information to unauthorised third parties; and
- (iii) inform Touchstone Life Care™ of any suspected or actual disclosure of Confidential Information; and

(b) shall not, without the express written consent of Touchstone Life Care™:

(i) directly or indirectly divulge or communicate or otherwise disclose any Confidential Information, in whole or part to any third party;

(ii) use any Confidential Information, other than for the express purpose set out in this Agreement; or

(iii) remove or cause to be removed from Touchstone Life Care™'s or its business partners' premises or systems any Confidential Information.

9.2 This Clause shall survive the termination of this Agreement.

10. ACP Customer Data Information

10.1 Subject to the Privacy Policy and to the extent that Confidential Client Data Information is not in the public domain (other than by way of breach of this Agreement) and is not known by Touchstone Life Care™ at the time of disclosure, Touchstone Life Care™:

(a) shall keep such information confidential;

(b) shall not, without the express written consent of ACP Customer:

(i) directly or indirectly divulge or communicate or otherwise disclose ACP Customer Client Data Information, in whole or part to any third party; or

(ii) use ACP Customer Client Data Information for its own purposes.

10.2 This Clause shall survive the termination of this Agreement.

11. Fees

11.1 ACP Customer (or the organisation purchasing these services on behalf of ACP Customer) shall pay Touchstone Life Care™ the Fees without withholding, deduction or offset of any amounts for any purpose.

11.2 Unless agreed otherwise in writing, Touchstone Life Care™ may increase the Fees at any time upon one month's notice.

11.3 An account rendered by e-mail or otherwise by Touchstone Life Care™ shall be prima facie evidence for a Court of the provision of the items referred to in same to ACP Customer by Touchstone Life Care™.

12. Tax

12.1 Unless expressly stated to the contrary and to the extent permitted by law:

(a) the Fees are exclusive of all Taxes which may arise in relation to the subject matter of this Agreement;

(b) the organisation purchasing these services on behalf of ACP Customer shall immediately pay any applicable Taxes to Touchstone Life Care™; and

(c) the organisation purchasing these services on behalf of ACP Customer shall indemnify and keep indemnified Touchstone Life Care™ from payment of the Taxes and any penalties arising from non-payment of same.

13. Interest

13.1 The organisation purchasing these services on behalf of ACP Customer shall pay Touchstone Life Care™ interest at the Interest Rate on all overdue amounts from the due date until payment is made.

14. Suspension of Obligations

14.1 If ACP Customer breaches any provision of this Agreement Touchstone Life Care™ may, without further notice to ACP Customer,

(a) suspend all its obligations to ACP Customer under this Agreement;

(b) disable Touchstone Life Care™ Services using security, time out codes, remote access or other technological measures.

15. Force Majeure

15.1 Touchstone Life Care™ shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to Force Majeure.

16. Limitation of Liability

16.1 To the extent permitted by law and except as expressly provided to the contrary in this Agreement, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded. Where legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in this Agreement. However, the liability of Touchstone Life Care™ for any breach of such term shall be limited, at the option of Touchstone Life Care™, to any one or more of the following: if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

16.2 To the extent permitted by law and except as expressly provided to the contrary in this Agreement, Touchstone Life Care™ shall not be under any liability (contractual, tortious or otherwise) to ACP Customer in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to this Agreement or an act, failure or omission of Touchstone Life Care™.

16.3 ACP Customer warrants that it has not relied on any representation made by Touchstone Life Care™ or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by Touchstone Life Care™.

17. Further Assistance

17.1 ACP Customer shall:

- (a) declare, make or sign all documents and do all things necessary or desirable to give full effect to this Agreement; and
- (b) if applicable, procure its officers, employees and agents to do same.

18. Indemnity

18.1 To the extent permitted by law, ACP Customer shall release, indemnify and keep indemnified Touchstone Life Care™, its officers, employees and agents, against any injury, death, damage, loss, costs (including legal costs on an indemnity basis), expenses, interest, taxes or liability whether direct or indirect and whether sustained by Touchstone Life Care™, Touchstone Life Care's officers, employees, contractors and agents, ACP Customer, ACP Customer's officers, employees and agents or a third party arising out of:

- (a) a breach of this agreement by ACP Customer;
- (b) any wilful, unlawful or negligent act or omission of ACP Customer, its officers, employees or agents;
- (c) any injury suffered by ACP Customer's officers, employees or agents; and
- (d) the discharge of ACP Customer's obligations pursuant to this Agreement.

18.2 This indemnity applies regardless of whether or not legal proceedings are instituted.

18.3 This indemnity applies to any payment, settlement, compromise or determination regardless of whether same is, or is not, authorised by ACP Customer.

18.4 It is not necessary to incur any expense or make any payment before enforcing any right of indemnity under this Agreement.

18.5 This Clause survives termination of this Agreement.

19. Waiver

19.1 No right of Touchstone Life Care™ under this Agreement shall be deemed to be waived except by notice in writing signed by Touchstone Life Care™. Any such waiver shall be limited to its express terms.

19.2 Any failure by Touchstone Life Care™ to enforce any provision of this Agreement, or any forbearance, delay or indulgence granted by Touchstone Life Care™ shall not be construed as a waiver of Touchstone Life Care's rights.

20. Survival

20.1 The provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

21. Assignment, Novation and Sub-Contracts

21.1 ACP Customer shall not sub-contract, sub-licence, assign or novate, in whole or part, any entitlement or obligation under this Agreement without the prior written consent of Touchstone Life Care™.

21.2 Touchstone Life Care™ may:

- (a) sub-contract for the performance or part performance of this Agreement; and
- (b) assign this Agreement to a third party without notice and in such circumstances, Touchstone Life Care™'s rights and obligations under this Agreement shall be immediately terminated upon assignment.

24. Termination

24.1 Touchstone Life Care™ may terminate this Agreement immediately if:

- (a) any payment due to Touchstone Life Care™ remains unpaid for a period of 14 days;
- (b) ACP customer breaches any provision of this Agreement and such breach is not remedied within 14 days of notice by Touchstone Life Care™;
- (c) ACP customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- (d) ACP customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (e) ACP Customer being a natural person, dies.

24.2 In addition to terminating this Agreement, Touchstone Life Care™:

- (a) may disable ACP Customer's access to Touchstone Life Care™ Services;
- (b) may retain any moneys paid;
- (c) may charge a reasonable sum for any un-invoiced items;
- (d) shall be regarded as discharged from any further obligations under this Agreement;

(e) shall be under no liability to ACP Customer for damages or compensation or any other payment whatsoever and

(f) may pursue any additional or alternative remedies provided by law.

25. Entire Agreement

25.1 Unless stated expressly to the contrary in this Agreement:

(a) this Agreement constitutes the entire agreement between the Parties for the subject matter referred to in this Agreement. Any prior arrangements, agreements, representations or undertakings are superseded;

(b) this Agreement is not to be construed as creating a joint venture, partnership or agency situation between the Parties. No Party may represent that there exists such a relationship between the Parties;

(c) no Party may bind another Party to any agreements, arrangements, contracts or understanding or represent that they have such authority; and

(d) no modification or alteration of any provision of this Agreement shall be valid except in writing signed by each Party save that Touchstone Life Care™ may on 30 days' notice change any term of this Agreement and in such a case ACP Customer may terminate this Agreement during that notice period without further obligation.

26. Governing Law

26.1 This Agreement shall be governed by and construed according to the law of New South Wales, Australia

26.2 The Parties irrevocably submit to the exclusive jurisdiction of the Courts of New South Wales, Australia and the Commonwealth of Australia. Any proceedings in a Commonwealth Court shall be commenced in New South Wales, Australia.