

Turning Technologies

End User License Agreement

IMPORTANT-- READ THE TERMS OF THIS AGREEMENT (“LICENSE AGREEMENT”) CAREFULLY BEFORE USING THESE SERVICES AND THIS SOFTWARE. BY USING THESE SERVICES AND THIS SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND UNCONDITIONALLY BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES OR SOFTWARE.

For purposes of this License Agreement, the following terms will have the following meanings:

“Account” means the Turning Account system, available for both presenters and participants (including Learners and Instructors), that connects an Authorized User to Turning Technologies products. Turning Accounts provide a unique identifier for each Authorized User and can be tied to all software accounts and response devices.

“Activation Code” has the meaning set forth in Section 3 of this License Agreement.

“Authorized User” (sometimes referred to herein simply as a “User”) means any person designated to access and use the Turning Software, Third Party Software or Services, including, without limitation, if such authorization has occurred as a result of a separate agreement between Turning and a third party (including, without limitation, a business entity, school system, or education institution) (“Client”) designating the Authorized User as an authorized user of the Turning Software, Third Party Software or Services. By way of clarification, Authorized Users include Learners and Instructors.

“Client” has the meaning in the previous definition.

“Contract Period” has the meaning set forth in section 1(c) of this License Agreement.

“Indefinite Term” has the meaning set forth in section 1(b) of this License Agreement.

“Initial Period” has the meaning set forth in section 1(c) of this License Agreement.

“Instructors” means teachers/professors/instructors who are Authorized Users and who have adopted certain specified textbooks or other learning materials for use in the classes they teach, or other teachers of seminars using the Services.

“Learners” means an Authorized User of an Account for purposes of learning or assessing in any capacity, including, without limitation, students, employees of Clients, and/or attendees of seminars.

“License Fees” has the meaning set forth in section 3(a) of this License Agreement.

“Licensee Termination Notice” has the meaning set forth in section 1(c) of this License Agreement.

“Limited Term” has the meaning set forth in section 1(c) of this License Agreement.

“Renewal Period” has the meaning set forth in section 1(c) of this License Agreement.

“SaaS Services” means the Turning-hosted and Internet-accessible services that Client or the Authorized User is licensed to use pursuant to this License Agreement and all related interfaces, software, extensions, routines, and programs as the same are made accessible to Client by Turning via the Internet as part of the Services.

“Services” means, collectively, the SaaS Services and those services to be performed by Turning, including, without limitation, by agreement with Client.

“Software” means, collectively, the Turning Software and, if applicable, Third Party Software. For purposes of clarification, the term “Software” also means and includes Data Files (defined below in the ExamView® Learning Series section of this License Agreement).

“Term” has the meaning set forth in section 1(a) of this License Agreement.

“Terms” means these listed terms and conditions as set forth in this License Agreement.

“Third Party Software” means any third-party software solutions provided or made available as part of the Services to Client or to an Authorized User, as well as all media, documentation and data made available that is related to such software.

“Turning” means Turning Technologies, LLC, an Ohio limited liability company.

“Turning Software” means any Turning Technologies software provided as part of the Services to Client or to an Authorized User and all fixes, releases, updates, modifications and additions to such software that are provided by Turning to Client or to an Authorized User, as well as all media, documentation, and data made available by Turning that is related to such software.

“You” or “you” means the Authorized User using the Services and Software, and agreeing to this License Agreement.

THROUGH TURNING’S ACCOUNT SYSTEM, A UNIQUE IDENTIFIER IS PROVIDED FOR EACH AUTHORIZED USER AND CAN BE TIED TO ALL TURNING SOFTWARE ACCOUNTS AND RESPONSE DEVICES ASSOCIATED WITH YOU. TURNING ACCOUNTS REQUIRE USERNAME AND PASSWORD VERIFICATION, ENSURING PROTECTION OF ELECTRONIC RECORDS, INCLUDING PARTICIPANT AND SESSION. **AS A CONDITION OF USING THE SERVICES AND THE SOFTWARE, YOU SHALL GUARD THE CONFIDENTIALITY OF YOUR USERNAME AND PASSWORD.**

In registering for the Services, you agree to: (1) provide true, current, and complete registration data; and (2) maintain and promptly update the registration data to keep it true, current, and complete. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to notify Turning immediately of any unauthorized use of your password or any other breach of security. You agree not to create or access an Account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account at any given time. You agree not to create an Account or use the Turning Services or Software if you have been previously removed by Turning, or if you have been previously banned from any of the Services or Software.

1. Term

a. The term “Term” means the term and duration of the license under section 2 of this License Agreement (or the duration of any other right of or granted to you under this License Agreement), which is either the Indefinite Term (as defined in section 1(b) of this License Agreement), or the Limited Term (as defined in section 1(c) of this License Agreement), whichever is applicable to the license granted to you or the Client, as applicable, under this License Agreement.

b. If you (or the Client, as applicable) obtained the Software from Turning or an authorized agent or distributor of Turning or are using the Software or Services expressly on the condition that the license is granted for an indefinite time (which shall be the case if the license is described or identified as “perpetual” or something similar), the term “Term” means the duration of time that commences upon your (or the Client’s) acceptance and continues indefinitely until any termination of this License Agreement (the “Indefinite Term”). If the Term is the Indefinite Term then section 1(c) and section 3(c) of this License Agreement have no application.

c. If you (or the Client, as applicable) obtained the Software from Turning or an authorized agent or distributor of Turning or are using the Software or Services for a limited period of time, the term “Term” means the duration of time that commences upon your (or the Client’s, as applicable) acceptance of the license and continues for the duration of such limited period of time (the “Initial Period”) and continues thereafter automatically for consecutive renewal periods of the same duration (each, a “Renewal Period”) (the Initial Period and each Renewal Period individually a “Contract Period”) until the earlier of the following events: (i) you or the Client, as applicable, give timely notice of termination before the end of a Contract Period but only if such written notice of termination is received by Turning no earlier than the ninetieth (90th) day before and no later than the day immediately preceding the end of such Contract Period (the “Licensee Termination Notice”), in which case this License Agreement will terminate at the end of such Contract Period; or (ii) any termination of this License Agreement pursuant to any term of this License Agreement, whichever occurs earlier (the “Limited Term”). If the Term is the Limited Term, section 1(b) and 3(b) of this License Agreement have no application.

2. Grant of License for Authorized Users

Subject to these Terms, Turning grants to you during the Term, and you accept during the Term, (a) a limited, non-exclusive, non-transferable, revocable license to access via the Internet, perform and display the SaaS Services, as hosted by Turning, and (b) (if applicable) a limited, personal, non-exclusive, non-transferable, revocable license to make and use the Turning Software provided to Client by Turning, except that if Turning Software is permanently installed on the hard disc or other storage device of a personal computer (i.e., a single-user computer other than a network server), then the Authorized User of such computer also may copy and use the Turning Software on a portable computer/device, laptop, or home computer, provided only one copy is in use at any given time. If an Authorized User’s authorization to use the Turning Software ceases for any reason (e.g., termination of employment from Client or termination of the Authorized User’s studies at the educational institution that a Learner attends), then such Authorized User’s authority to use the Turning Software shall cease, including, without limitation, any use of the SaaS Services and/or any use on a portable computer/device, laptop, and home computer and Authorized User shall permanently delete all copies of the Turning Software. The Turning Software is in “use” on a computer or device when it is copied or loaded into the permanent (i.e., hard disk or other storage device) or temporary memory (i.e., RAM, flash storage, etc.) of a single computer or other device. A separate license is required for each copy of the Turning Software.

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3. License Fees and Activation

a. If applicable, you are obligated to pay (or the Client, if applicable, is obligated to pay) all license fees and any other payment agreed to be made for, or due for, the granting of the license by Turning and rights in this License Agreement to you or the Client for the Term (collectively, the “License Fees”). You or the Client, as applicable, shall pay all License Fees in immediately available indefeasible unconditional funds without any set-off or deduction. All License Fees are exclusive of any taxes or other governmental or governmentally or legally imposed charges, fees, costs, or expenses, all of which shall be due in addition to the License Fees. Any amount of any License Fee that is unpaid when it is due shall accrue interest from the date it is due until Turning’s receipt of the payment of such amount at the rate of the lower of (i) one and one-half percent (1.5%) per full or partial calendar month or (ii) the highest enforceable rate of interest under applicable law. All such interest shall be paid simultaneously with the payment of the unpaid amount on which such interest accrued.

b. In the event that the Term is the Indefinite Term, the License Fees, if applicable, are due in total at the time of your (or the Client’s) acceptance pursuant to the applicable written agreement for licensing the Software or Services, or such other due date(s) as Turning expressly agreed to otherwise in a written agreement. If all or any part of the License Fees has not been paid or received by Turning, Turning has the right to terminate this License Agreement and the license and rights to you (and the Client, if applicable) at any time with immediate effect. Turning may, if and as decided by Turning in its discretion, permit you or the Client, as applicable, to cure such non-payment to avoid such termination.

c. In the event that the Term is the Limited Term, the License Fees for the Initial Period are due in total at the time of your (or the Client’s) acceptance pursuant to the applicable written agreement for licensing the Software or Services and the License Fees for a Renewal Period are due on the first day of such Renewal Period. If all or any part of the License Fees for a Renewal Period has not been paid or received by Turning, Turning has the right to terminate this License Agreement and the license and rights to you (and the Client, if applicable) at any time with immediate effect. Turning may, if and as decided by Turning in its discretion, permit you or the Client, as applicable, to cure such non-payment to avoid such termination.

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7. Confidentiality

You acknowledge that the Services and Turning Software contain proprietary trade secrets of Turning and you hereby agree to maintain the confidentiality of the Services/Turning Software using at least as great a degree of care as you use to maintain the confidentiality of your own most confidential information, but in no case less than a reasonable degree of care.

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Client or Authorized User is solely responsible for the accuracy of all data and information entered into the Services and the Software. If Client and/or Authorized User retains or shares student data or information that constitutes “personally identifiable information” under the Family Educational Rights and Privacy Act (“FERPA”), Turning and Client/Authorized User shall use reasonable methods to ensure to the greatest extent practicable that such student data is protected in a manner that harmonizes with FERPA. Turning has been independently verified for FERPA compliance. Turning Cloud harmonizes with FERPA respecting the collection, use and protection of education records. If FERPA applies to you, the following apply. THE APPLICABLE EDUCATION INSTITUTION RETAINS OWNERSHIP OF ANY EDUCATION RECORDS MAINTAINED BY TURNING CLOUD. EDUCATION RECORDS SHALL ONLY BE USED BY THE APPLICABLE EDUCATION INSTITUTION OR AN AUTHORIZED USER AS DIRECTED BY SUCH EDUCATION INSTITUTION OR STUDENT VIA A SIGNED CONSENT. EDUCATION RECORDS SHALL BE DESTROYED BY TURNING OR RETURNED TO THE EDUCATION INSTITUTION IF THE EDUCATION INSTITUTION’S AGREEMENT WITH TURNING IS TERMINATED. THE EDUCATION INSTITUTION SHALL STORE EDUCATION RECORDS IT CREATES AND MAINTAINS ON ITS OWN EXCHANGE SERVER SYSTEM. EDUCATION RECORDS SHALL BE STORED ON SERVERS THAT ARE ENCRYPTED, AND WITH NAME AND PASSWORD PROTECTION. THE EDUCATION INSTITUTION SHALL ALLOW STUDENTS ACCESS TO EDUCATION RECORDS UPON REQUEST OF THE STUDENT. ALL REQUESTS TO EDUCATION RECORD ACCESS BY STUDENTS SHALL BE DIRECTED TO AND CONTROLLED BY THE EDUCATION INSTITUTION – AND NOT TURNING.

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If you believe that any content posted through the Services infringes your copyright, you may request that such content be removed. This request must bear a signature (or electronic equivalent) of the copyright holder or an authorized representative and must include the following information:

- a. identification of the copyrighted work that you believe to be infringed, including a description of the work and, where possible, a copy or the location of an authorized version of the work;
- b. identification of the content that you believe to be infringing and its location, including a description of the content;
- c. your name, address, telephone number and e-mail address;
- d. a statement that you have a good faith belief that the complained use of the material is not authorized by the copyright owner, the copyright owner's agent, or the law;
- e. a statement that the information in your claim is accurate; and
- f. a statement that "under penalty of perjury," you declare that you are the lawful copyright owner or are authorized to act on the owner's behalf.

Turning's agent for copyright issues related to our Services and any Turning products is Lindsay Czopur, lczopur@turningtechnologies.com; 255 West Federal Street, Youngstown, Ohio 44503, 1-866-746-3015.

In an effort to protect the rights of copyright owners, Turning maintains a policy for the termination, in appropriate circumstances, of users of our Services or any Turning products who are repeat offenders.

20. Governing Law; Jurisdiction

You may not assign this License Agreement or any rights or obligations hereunder without obtaining the prior written consent of Turning. This License Agreement shall be governed by the laws of the State of Ohio, without giving effect to principles of conflict of laws. Any dispute between the parties connected with this Agreement shall be submitted to the sole jurisdiction of the courts of the State of Ohio, County of Mahoning, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Ohio. Each of the parties consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

21. Miscellaneous

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22. Changes

We may amend this End User License Agreement from time to time. If we make material changes to this License Agreement, we may notify you by posting the change on the Turning Services or in the Software, or by sending you an email at your primary email address as specified in your Account. Any changes to this License Agreement will be effective immediately for new users of our Application; otherwise such changes will be effective upon the earlier of fourteen (14) calendar days following our dispatch a notice to you or fourteen (14) calendar days following our posting of a notice on the Services. You are responsible at all times for updating your Account to provide to us your most current email address. If the last email address that you have provided to us is not valid, or for any reason is not capable of delivering the notice described above, our dispatch of the email containing such notice will nonetheless constitute effective notice of the changes. Continued use of our Services and Software following notice of such changes will indicate your acknowledgement of and your agreements to be bound by such changes. Except as otherwise provided in this License Agreement, no amendment to this License Agreement will be valid unless in writing with valid signatures by the parties.

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