



# TURING VIDEO - Data Access Management Platform Subscription Terms

(Updated August 2020)

These Turing Data Access Platform Subscription Terms (“Subscription Terms”) are part of a legal agreement (the “Agreement”) between the person or entity agreeing to these terms (“Customer”) and Turing, Inc., a Delaware corporation, and includes these Subscription Terms, any terms expressly incorporated herein by reference, and any terms in a fully executed ordering document that incorporates these Subscription Terms (an “Order Schedule”). This Agreement is effective as of the date the Order Schedule is fully executed (the “Effective Date”).

## 1. SUBSCRIPTIONS

1.1. Subscription Services. Subject to the provisions of these Subscription Terms, Turing will provide certain cloud-based Software services (“Cloud Services”) as specified on an Order Schedule for the period specified in the applicable Order Schedule (the “Subscription Period”).

### 1.2 Definitions.

“Software” means the Turing data access management platform software and related tools and the Console.

“Console” means the web-based user interface that Customer shall use to access the Cloud Services.

“Customer Data” means all proprietary, non-public electronic data or information submitted to the Cloud Services by Customer, including Events.

“Device” means an individual temperature scanner or other device as defined in an Order Schedule.

“Event” means a record of a scan taken by a Device that is transmitted to the Cloud Services.

1.3 Modifications; Discontinuation of Service. Turing may make modifications to the Cloud Services or components of the Cloud Services, including the Software, from time to time and will use commercially reasonable efforts to notify the Customer of any material modifications. Turing reserves the right to discontinue offering the Cloud Services at the conclusion of Customer’s then-current Subscription Period.

## 2. LICENSE

The Cloud services do not include the separate licensing or any sale of Software. Subject to the provisions of these Subscription Terms and Order Schedule, Turing grants Customer a worldwide, nonexclusive, non transferable, non sublicensable, terminable license to access the Software provided with the Cloud Services via the Console during the Subscription Period to view and manage Events from Devices, subject to any license parameters specified in the applicable Order Schedule. As between the parties, all intellectual property rights in the

Software and Cloud Services shall remain with Turing or its licensors. Software and Cloud Services may be updated at any time. If Turing materially reduces the Cloud Services, if practicable, Turing will provide reasonable notice of no less than six months prior notice to Customer.

### **3. PAYMENT**

#### **3.1. Fees.**

Customer will pay all fees specified in the Order Schedule for Cloud Services (“Fees”). If the Order Schedule specifies a subscription basis, all Fees are due 30 days from the invoice date. If the Order Schedule specifies a pay-as-you-go basis, Customer shall provide a credit card for the payment of Fees. For the pay-as-you-go basis, Customer authorizes a recurring monthly charge to your credit card based on our current fee schedule for the Cloud Services. All Fees are non-refundable and non-cancelable. Unless otherwise specified in the Order Schedule, all Fees are in U.S. dollars and shall be paid without setoff or deduction. Unless otherwise specified in the applicable Order Schedule, upon renewal of the Subscription Period, the Fees will be the then-current list price for Cloud Services.

**3.2. Taxes.** Customer is responsible for any duties, customs fees, or taxes (other than Turing’s income tax) associated with the Cloud Services and professional services, including any related penalties or interest (“Taxes”), and shall pay the listed Fees without deduction for Taxes. If Customer is required by applicable law to withhold any amount from any payments specified in the Order Schedule, then Customer will pay Turing the listed Fees as if no withholding were required, and shall remit the withholding to the appropriate governmental authorities on behalf of Turing, with a copy of the tax receipt or certificate forwarded to Turing.

**3.3. Delinquencies.** Any late payments will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

### **4. RESTRICTIONS**

All rights in the Software, Console, and Cloud Services not expressly granted under this Agreement are reserved to Turing or its licensors. Without limiting the foregoing (except to the extent such restriction is expressly prohibited by applicable law), Customer shall not, and shall not permit others under its control to: (1) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract the source code of the Software, Console, or any component of the Cloud Services; (2) assign, sublicense, transfer, lease, rent or otherwise distribute or make available the Software or Console, or Cloud Services to any third party; (3) use the Cloud Services for High Risk Activities or otherwise contrary to the Documentation; (4) use the Cloud Services to create, deliver training on, improve (directly or indirectly) or offer a substantially similar product or service; (5) reconfigure the Cloud Services without prior written consent from Turing; or (6) perform benchmarking of the Cloud Services. Customer shall not exceed more than 500 Events per day, per Device. Should the customer exceed this amount, the parties will in good faith negotiate the fees for the additional use. If Customer declines to increase the use limits as recommended by Turing or otherwise

refuses to cooperate with Turing to increase its use, Turing may suspend Customer's use of the Cloud Services, until such time as Customer is able to reduce its use to a compliant level.

## **5. PROPRIETARY RIGHTS; DATA**

5.1. Federal Agency Users. The Software was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable Federal Acquisition Regulation and agency supplements thereto.

5.2. Feedback. If Customer provides any suggestions or feedback regarding the Software, Console, or Cloud Services, Turing may use such information without obligation to Customer, and Customer hereby irrevocably assigns to Turing all right, title, and interest in that feedback or those suggestions.

5.3. Customer Data. As between Turing and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer is solely responsible for the content of Customer data. Customer hereby authorizes and consents to Turing's access, processing, and storage of Customer Data solely to provide the Cloud Services and for internal business purposes, including providing support, improving, and testing the Cloud Services. Customer will obtain any consents from Customer's end users that are required for Customer to pass the Customer Data to Turing to provide the Cloud Services. Customer Data does not include (a) information submitted by Customer via a support ticket or other type of support request; or (b) usage data derived by Turing from Customer's use of the Software and Cloud Services provided that such data is anonymized/deidentified and aggregated.

5.4. HIPAA. Unless Customer and Turing are parties to a Business Associate Agreement, Customer agrees that: (i) Turing is not acting on Customer's behalf as a Business Associate or subcontractor; (ii) the Software may not be used to store, maintain, process or transmit protected health information ("PHI"); (iii) the Cloud Services will not be used in any manner that would require Turing, the Software, or the Cloud Services to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected health information" or "PHI" shall have the meanings described in HIPAA.

5.5. GDPR. Should Customer Data contain Personal Data as defined by The EU general data protection regulation 2016/679 "GDPR," this Agreement shall be a contract as specified by Article 28(3) of the GDPR. Customer agrees that it shall comply with its obligations as a controller under the GDPR. In its role as a processor under the GDPR, Turing agrees that it:

(a) processes the Personal Data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

- (b) ensures that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (c) takes all measures required pursuant to Article 32 of the GDPR;
- (d) respects the conditions referred to in paragraphs 2 and 4 of Article 28 of the GDPR for engaging another processor;
- (e) taking into account the nature of the processing, assists the controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
- (f) assists the controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to the processor;
- (g) at the choice of the controller, deletes or returns all the Personal Data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the Personal Data;
- (h) makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

5.6. CCPA. To the extent that Customer Data contains Personal Information as defined under the California Consumer Privacy Act of 2018 (as amended) ("CCPA"), Turing shall act as a Service Provider with respect to such Personal Information, in accordance with the CCPA. This Agreement prohibits the Turing from retaining, using, or disclosing Personal Information for any purpose other than for the specific purpose of performing the services specified in this contract for Customer, or as otherwise permitted by the CCPA, including retaining, using, or disclosing the personal information for a commercial purpose other than providing the services specified in this Agreement. Customer agrees that it shall comply with all its obligations as a business under the CCPA.

## **6. TERM & TERMINATION**

6.1. Agreement Term. This Agreement will begin on the Effective Date and continue until the later of the following: (1) the expiration or completion of all Subscription Periods under any open Order Schedules; (2) if the Order Schedule specifies a pay-as-you-go basis, the date you close your account; (3) the date on which the Agreement is terminated as specified herein. Each Subscription Period will automatically renew for successive one-year periods (or such longer time as may be specified on an Order Schedule) unless either party gives at least ninety (90) days written notice to the other party prior to the end of the then-current Subscription Period.

6.2. Termination for Breach. Either party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure that breach within 30 days after receipt of written notice.

6.3. Termination by Turing. Turing may terminate this Agreement for any reason by providing Customer 30 days' advance notice.

6.4. Effect of Termination. If the Agreement expires or is terminated, then: (1) the rights granted by one party to the other will immediately cease; (2) all Fees owed by Customer are immediately due upon receipt of the final invoice, and if Customer provided a credit card, Customer authorizes Turing to charge for all outstanding Fees; and (3) upon request, each party will use commercially reasonable efforts to return or destroy all Confidential Information of the other party.

## **7. CONFIDENTIALITY**

7.1. Confidentiality Obligation. During the term of this Agreement, both parties agree that: (1) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (2) each will use the same degree of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (3) the Confidential Information may be disclosed only to (a) employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement; and (b) comply with a legal requirement or process, including, but not limited to, civil and criminal subpoenas, court orders or other compulsory disclosures inside or outside of the United States. "Confidential Information" means any information designated as confidential orally or in writing by either party, or any information that the receiving party knows, or has reason to know, is confidential or proprietary based upon its treatment by the disclosing party.

7.2. Exclusions. This Agreement imposes no obligation with respect to information that: (1) is a part of or enters into the public domain; (2) was already in the recipient's possession prior to the date of disclosure other than by breach of this Agreement; (3) is rightfully received from a third party without any duty of confidentiality; or (4) is independently developed without reference to the Confidential Information of the disclosing party.

7.3. Publicity. Turing may identify Customer as a customer of the Cloud Services, provided that any such statements shall conform with any trademark use guidelines provided by Customer. Each party must obtain the other party's advance consent to any press release relating to the Cloud Services.

## **8. WARRANTIES**

8.1. Services Warranty. Turing warrants that the Cloud Services will meet the requirements set forth in the documentation applicable to this Cloud Services ordered. If the Cloud Services fail to conform to the foregoing warranty, as Customer's sole and exclusive remedy for such failure, and provided that Customer provides Turing with written notice of such breach within thirty (30)

days of occurrence, Turing will promptly attempt to re-perform the applicable Cloud Services or at Turing's option terminate this Agreement and refund any pre-paid Fees attributable to the non-conforming Cloud Services following the termination date.

8.2. SLA Warranty. Turing warrants that the Cloud Services will meet the service level terms as provided in the Amazon Compute Service Level Agreement located here:

<https://aws.amazon.com/compute/sla/> "SLA". Any service credits that Turing obtains under the SLA from Amazon Web Services "AWS" shall be provided to Customer on a pro-rata basis with Turing's customers. This warranty does not provide any rights for Customer with AWS.

8.3. Authority. Each party warrants that it has full power and authority to enter into this Agreement.

8.4. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, NEITHER TURING NOR ITS SUPPLIERS PROVIDE ANY OTHER WARRANTIES REGARDING THE SOFTWARE, THE CLOUD SERVICES OR THE PROFESSIONAL SERVICES, AND TO THE FULLEST EXTENT PERMITTED BY LAW TURING DISCLAIMS ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON INFRINGEMENT, AND ANY WARRANTIES, TERMS AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM TURING OR ELSEWHERE WILL CREATE ANY WARRANTY, TERM OR CONDITION UNLESS EXPRESSLY STATED IN THIS AGREEMENT. THE SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES. THE CLOUD SERVICES, PROFESSIONAL SERVICES, SOFTWARE, AND CONSOLE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TURING EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER'S USE OF THE CLOUD SERVICES OR SOFTWARE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE CLOUD SERVICES, SOFTWARE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

## 9. INDEMNITY

9.1. Indemnity by Turing. Turing shall defend or settle at its sole expense any claim brought against Customer, its directors, officers, or employees by a third party alleging that the Software as installed by Turing in the Cloud Services infringes or misappropriates any patent, copyright, or trade secret of a third party, and Turing shall pay all damages finally awarded or costs of settlement of the claim provided that Customer: (1) provides Turing prompt written notice of any claim; (2) gives Turing sole control of the defense and settlement of the claim but may not settle any claim unless such settlement fully releases Customer from any liability; and (3) provides all reasonable assistance in connection with the claim.

9.2. Injunctions. If Customer's rights to use the Software are, or in Turing' opinion could be, enjoined due to an indemnified claim, then Turing may, at its sole option and expense: (1) procure for Customer the right to continue using the Software according to the terms of this Agreement, (2) modify the Software such that it operates with materially equivalent functionality without infringing or misappropriation, or (3) if neither of the foregoing options is commercially reasonable, terminate the Agreement and refund any prepaid portion of the Fees attributable to the period following termination.

9.3. Exclusions. The indemnity provided by Turing under this Agreement does not extend to claims arising from or relating to: (1) modifications to the Software not provided by or approved in writing by Turing; (2) use of the Software in combination with any data, software, or hardware not provided by Turing to the extent the alleged infringement would not have occurred without the combination; (3) Third Party Software; (4) use of the Software in violation of this Agreement, or (5) allegedly infringing activities that continue after Turing has informed Customer in writing of and made available to Customer at no additional charge a substantially similar version of the Software that would have avoided the alleged infringement.

9.4. Remedy. This Section 6 states Customer's sole and exclusive remedy with respect to claims of infringement of third party proprietary rights of any kind and is subject to the terms of the section titled "Limitation of Liability."

9.5. Customer Indemnity. Customer shall defend or settle at its sole expense any claim brought against Turing, its directors, officers, or employees by a third party arising out of Customer's misuse of the Software or the Cloud Services, any breach of Section 5.3 ("Customer Data"), or Customer's failure to obtain proper consents or other lawful basis for the transmission to and use of Personal Data, Personal Information, or PHI by Turing .

## **10. LIMITATION OF LIABILITY**

To the fullest extent permitted by applicable law, in no event shall Turing or its suppliers be liable for damages other than direct damages, including the cost of procurement of substitute goods or technology, loss of profits, or for any special, consequential, incidental, punitive or indirect damages on any theory of liability, whether in statute, contract, tort, strict liability, indemnity or otherwise, even if advised of the possibility of such damages.

To the fullest extent permitted by applicable law, in no event shall the total liability of Turing to Customer under this Agreement exceed the greater of the total amounts paid by Customer to Turing during the 12 months prior to the date the claim arises, or ten thousand US dollars. The liability limitations in this paragraph (and otherwise in the Agreement) do not limit or exclude damages for bodily injury or death or other damages that under applicable law cannot lawfully be limited or excluded.

## **11. INSURANCE**

During the term of this Agreement, Turing will maintain at least the following levels of insurance coverage: (1) general commercial liability of \$1 million per occurrence, \$2 million aggregate for

bodily injury and property damage; (2) automotive, hired and non-owned liability of \$1 million for bodily injury and property damage; (3) errors and omissions of \$2 million per claim and aggregate limit; and (4) workers' compensation meeting statutory limits.

## 12. MISCELLANEOUS

12.1. Affiliates. Turing and Customer agree that Affiliates of Customer may acquire Cloud Services from Turing or its Affiliates by entering an Order Schedule with Turing (or a Turing Affiliate) that incorporates the terms and conditions of this Agreement and sets forth the then-applicable pricing. The parties acknowledge that adjustments to the terms of this Agreement may be made in a particular Order Schedule (for example, to address disparate tax and/or legal regimes in other geographic regions). "Affiliate" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

12.2. Assignment. The Agreement may not be assigned by either party by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Schedules), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or the sale of all or substantially all of the assets of the business to which the Agreement relates. Any such assignment shall be effective upon payment of all amounts then due.

12.3. Conflicting Terms. If there is a conflict among the documents that make up this Agreement, the documents will control in the following order: the Order Schedule, these Subscription Terms, and the terms located at any URL referenced in these Subscription Terms.

12.4. Entire Agreement. This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement are hereby incorporated by this reference. After the Effective Date, Turing may provide the Customer with an updated URL in place of any URL in this Agreement. Customer agrees that its purchase of a Subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Turing, including any roadmaps or target release dates, with respect to future functionality or features.

12.5. Export Controls. Customer agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce and any other United States or foreign agencies and authorities in connection with Customer's use of the Cloud Services and Software. In particular, but without limitation, the Software may not, in violation of any laws, be exported or re-exported: (1) into any U.S. embargoed country; or (2) to anyone on the U.S. Treasury



Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Customer represents and warrants that Customer and its Affiliates are not located in, under the control of, or a national or resident of any such country or on any such list.

12.6. Force Majeure. Neither party will be liable for failure or delay in its performance under this Agreement to the extent caused by circumstances beyond its reasonable control. Turing reserves the right to suspend Cloud Services to comply with laws.

12.7. Governing Law. This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without regard to its conflict of laws principles, and each party hereby consents to the jurisdiction of the federal or state courts of Santa Clara County, California, USA. Each party hereby waives any right to jury trial in any litigation in any way arising out of or related to this Agreement.

12.8. Independent Contractors. This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors.

12.9. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless it expressly states that it does.

12.10. Notices. All notices must be in writing and addressed to the other party's legal department and primary point of contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

12.11. Severability and Waiver. In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, the provision (or portion) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

12.13. Survival. The following sections will survive any expiration or termination of this Agreement: Payment, Restrictions, Proprietary Rights, Effect of Termination, Confidentiality, Limitation of Liability, and Miscellaneous.

12.14. Updates. Except as expressly provided herein, no modification of this Agreement will be effective unless contained in writing and signed by an authorized representative of each party. Turing may make changes to terms located at a URL referenced in this Agreement, including these Subscription Terms (collectively, the "URL Terms") from time to time. Turing will post the amended terms and will update the "Last Updated Date" at the top. By continuing to use the Cloud Services, Console, or Software after Turing has provided the Customer with such notice of a change, Customer is indicating that it agrees to be bound by the modified terms. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must notify Turing within 30 days of the applicable Last Updated Date. If Customer notifies Turing as required, then Customer will remain governed by the terms in effect



immediately prior to the change until the end of the then-current Subscription Period. If the Subscription Period is renewed, it will do so under the updated URL Terms.