**TERMS OF SERVICE**

These Terms of Service ("Terms") apply to you if you are an institution, university, college, school, or organization (each, an "Institution") and to you if you are an individual, customer, authorized end user, and/or a customer’s authorized end user (each, an "User") ("You" refers to an Institution and User). These Terms by Proctorio GmbH (Bahnhofstraße 18, 85774 Unterföhring) govern Your access to and use of the services, including our ("Proctorio" or "We") various websites, SMS, APIs, email notifications, documentation, software or applications, including the SaaS Agreement technology/application software ("Application Service") (collectively, the "Services"), and any information, content, text, graphics, photos, audio, video, or other materials, uploaded, downloaded, or appearing on the Services, (with the exclusion of "Feedback," as defined in Section 7) (collectively, "Content"). Your access to and use of the Services is conditioned on Your acceptance of and compliance with these Terms.

**Note:** By signing the SaaS Agreement you agree that these Terms (except Section 4) also apply to Proctorio’s third parties and subcontractors who perform services under a SaaS Agreement.

1. **Basic Terms.**

You are responsible for Your use of the Services, including any Content You post to the Services, and for any consequences thereof. The Content You submit, post, or display may be viewed by Your Institution’s authorized representatives. You should only provide Content that You are comfortable sharing with others under these Terms.

You may use the Services only if You or Your Institution can form a binding contract with Proctorio. If You accept these Terms and use the Services on behalf of an Institution, You represent that You are authorized to do so. You may use the Services only in compliance with these Terms and all applicable local, state, national, and international laws.

The Services that Proctorio provides evolve, and the form and nature of the Services may change. Proctorio reserves the right to make any minor technical changes which are usual within the industry to its Services as is necessary to maintain the Services at a state-of-the-art standard. Where these changes go beyond minor technical changes, Proctorio shall notify You in time before the change becomes effective and explain their effect. Your right to terminate this agreement at any time in accordance with Section 11 remains unaffected. To ensure you are aware of all updates to these Terms, please periodically check for updates and subscribe to receive update notifications from us on GitHub.

2. **Restricted Access.**

Access to certain areas of Proctorio’s website is restricted. Proctorio reserves the right to restrict access to areas of its website, or its entire website, at our discretion, within the limits set out in Section 1.

If Proctorio provides You with a username and password, API key and secret, or consumer key and secret to grant You access to restricted areas of its website, Content, or Services, You must ensure that these credentials are kept confidential. Proctorio is not liable for any loss or damage arising from Your failure to comply with the above requirements.

3. **Content on the Services.**

All Content, however transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control all Content posted via the Services and we cannot take responsibility for such Content. Your use or reliance on any Content or materials posted on the Services is at your own risk.

We do not endorse, support, represent, or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted on the Services or any opinions expressed therein. You understand that by using the Services, You may be exposed to Content that is offensive, harmful, inaccurate, or otherwise inappropriate, or in some cases, postings that have been mislabeled or
are otherwise deceptive. Under no circumstances will Proctorio be liable for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage incurred as a result of the use of any Content posted, emailed, transmitted, or otherwise made available through the Services.

4. Your Rights and Obligations.

By submitting, posting, or displaying Content on or through the Services You grant us a worldwide, non-exclusive, royalty-free license to use, sublicense, transmit, display, and distribute such Content to Your Institution.

Proctorio is not responsible or liable for any use of Your Content by Your Institution in accordance with these Terms. You represent and warrant that You have all the rights and authority necessary to grant the rights granted herein to any Content that You submit.

If You have entered into a SaaS Agreement with us, You may permit Your employees, agents, or contractors ("Customer’s Users") or Your Student Users (together with Customer’s Users, “Authorized End Users”) to use the Application Service, if Authorized End Users are subject to an enforceable agreement, providing the same or greater protections for our Confidential Information and Application IP as found in these Terms, the SaaS Agreement, and/or the Privacy Policy. "Confidential Information" includes, but is not limited to, any and all written or oral information concerning the SaaS Agreement You may enter into with us, pricing and financial information, performance requirements, proposals, and Application Documentation.

You may not mandate Authorized End Users use the Application Service, but instead provide it as a service which may be used by the Authorized End User voluntarily.

You will notify Authorized End Users that they are subject to other educational institution’s terms and conditions, policies, and other obligations if the Authorized End Users use another educational institution’s testing center.

At your expense, You will assist Proctorio with access to, and use of, its facilities, equipment, and personnel, as Proctorio may need to perform its obligations under an applicable SaaS Agreement.

5. Your License to Use the Services.

Some of our Services may require you to install a browser extension.

You will not, nor will you permit any Authorized End User to: (i) copy or duplicate any of the Application Service, text, and/or graphical documentation describing the Application Service’s functionality (“Application Documentation”) provided through a release, update, or upgrade, and all related intellectual property provided to You (collectively, “Application IP”); (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Application IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Application IP, and You acknowledge that nothing in these Terms or in the SaaS Agreement will be construed to grant You any right to obtain or use such source code; (iii) modify, alter, tamper with, or repair any of the Application IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with Proctorio’s prior written consent; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Application IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; or (vi) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Your rights under the SaaS Agreement and these Terms. You will not use any of the Application IP or Services except in compliance with these Terms and the SaaS Agreement, including without limitation complying with Service Level Performance Standards. So long as you comply with these Terms, we give you a limited, nonexclusive, nontransferable, revocable license to use the software, solely to access the Services. To the extent any component of the software may be offered under an open source license, we’ll make that license available to you and the provisions of that license may expressly override some of these Terms. Your use of the Application IP or Services must comply with all applicable laws, statutes, regulations, or rules.
6. Proctorio Rights and Obligations.

Proctorio and its licensors retain all right, title and interest in, to, and under the Services, Application IP, and their components and any data Proctorio provides through the Services or Application Service. You acknowledge that You neither own nor acquire any additional rights in and to the foregoing that these Terms and/or the SaaS Agreement do not expressly grant.

The Services are protected by copyright, trademark, and other laws of both the United States and foreign countries. Nothing in the Terms gives You a right to use the Proctorio name or any of the Proctorio trademarks, logos, domain names, and other distinctive brand features.

7. Feedback.

Proctorio shall have the right to commercially use all communications, comments, questions, suggestions, or related materials which are transmitted to Proctorio, by any means, suggesting or recommending changes to the Application IP, including, new features or functionality (collectively, "Feedback"). You hereby assign all right, title, and interest in, to, and under the Feedback and agree to provide us assistance to document, perfect, and maintain our rights in the Feedback. We may use, without any restrictions, attribution, or compensation to You, any ideas, know-how, concepts, techniques, and all applicable intellectual property rights relating to the Feedback, whether or not patentable, for any purpose whatsoever. You agree and understand that we are not obligated to use, display, reproduce, or distribute anything in the Feedback.


Proctorio offers a flexible service, which may include recording of video, audio, and/or screen activity. The system requirements are dependent on the exam settings. More information can be found at: https://proctorio.com/system-requirements.

9. Restriction on Use of Service.

We have the right, but not the obligation, at all times to remove or refuse to distribute any Content on the Services, to suspend or terminate users, and to reclaim usernames as well as the right to access, read, preserve, and disclose any information if this is necessary to: (i) satisfy any applicable law, regulation, legal process, or governmental request; (ii) enforce the Terms, including investigation of potential violations hereof; (iii) detect, prevent, or otherwise address fraud, security, or technical issues; (iv) respond to user support requests; or (v) protect the rights, property, or safety of Proctorio, its users, its clients, and the public.

While accessing or using the Services You shall not: (i) access, tamper with, or use non-public areas of the Services, Proctorio's computer systems, or the technical delivery systems of Proctorio's providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available published interfaces (and only pursuant to those terms and conditions), unless You have been specifically allowed to do so in a separate agreement with Proctorio; (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive, or false source-identifying information; or (v) interfere with, or disrupt (or attempt to do so), the access of any user, host, or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services.

10. Copyright Policy.

Proctorio respects the intellectual property rights of others and expect You to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us. If You believe Your Content has been infringed, please provide us with the following information: (i) a physical or electronic signature of the copyright owner or a person authorized to act on their behalf; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (iv) Your contact information, including Your address, telephone number, and email; (v) a statement that You have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the
information in the notification is accurate, and, under penalty of perjury, that You are authorized to act on behalf of the copyright owner.

We reserve the right to remove Content alleged to be infringing without prior notice. Proctorio may also terminate a user’s account if the user is determined to be a repeat infringer. Our designated copyright agent for notice of alleged copyright infringement appearing on the Services is:

Proctorio GmbH
Bahnhofstraße 18
85774 Unterföhring
HRB 249933

11. Ending these Terms.

The Terms will continue to apply until terminated by either You or Proctorio, pursuant to the following provisions, unless You are otherwise subject to certain termination provisions arising from a SaaS Agreement with Proctorio.

You may terminate Your agreement with Proctorio at any time for any reason, without notifying us, by discontinuing Your use of the Services, unless otherwise provided in a SaaS Agreement. If You stop using the Services Your accounts may be deactivated due to prolonged inactivity under Proctorio’s sole discretion.

We may suspend or terminate Your account or cease providing You or Your authorized user with all or part of the Services at any time, if: (i) You have violated these Terms; (ii) You create risk or possible legal exposure for us; or (iii) it is no longer commercially viable to provide Services to You. We will make reasonable efforts to notify You by the email address associated with Your account or the next time You attempt to access Your account.

In all such cases, the Terms shall terminate, including, without limitation, Your license to use the Services, except that the following sections shall continue to apply: 3, 4, 6, 8, 10, 11, 14.

Nothing in this section shall affect Proctorio’s rights to change, limit or stop the provision of the Services without prior notice, as provided above in Section 1.

12. Indemnification.

If You entered into a SaaS Agreement with Proctorio, Proctorio agrees to indemnify, defend, and hold You harmless from and against any and all losses, liabilities, costs (including reasonable attorneys’ fees) or damages resulting from any third party claim that the Application Service and/or the Application Documentation infringes such third party’s U.S. patents issued as of the Effective Date or infringes or misappropriates, as applicable, such third party’s copyrights or trade secret rights under applicable laws of any jurisdiction, provided You promptly notify Proctorio in writing of the claim, cooperate with Proctorio, and allow Proctorio sole authority to control the defense and settlement of such claim. You agree to permit Proctorio, at Proctorio’s sole discretion, to enable You to continue to use the Application Service or the Application Documentation, or to modify or replace any such infringing material to make it non-infringing. If none of these alternatives is available, You shall, upon Proctorio’s written request, cease use of, and, if applicable, return, materials subject to the infringement claim. This provision shall not apply if the alleged infringement arises from any: (i) modification of the Application IP by You; (ii) combination, operation, or use of the Application IP with other non-Proctorio provided software, hardware or technology by You; (iii) use of a superseded or altered release of any of the Application IP, if You failed to use a then-current release of the Application IP we provided to you; (iv) Customer Content; or (v) third party products used by You (any of the foregoing circumstances under clauses (i), (ii), (iii), or (iv) a “Customer Indemnity Responsibility”).

To the extent allowable by law You agree to hold harmless, indemnify, and, at Proctorio’s option, defend Proctorio from and against any losses, liabilities, costs (including reasonable attorneys’ fees) or damages resulting from: (i) Your or any of Your Authorized End User’s negligence or willful misconduct; (ii) Your or any of Your Authorized End User’s unauthorized use of the Application IP; or (iii) a Customer Indemnity Responsibility, provided that You will not settle any third party claim against Proctorio without Proctorio’s consent.
13. **Disclaimers and Limitations of Liability.**

This section limits the liability of Proctorio and its parents, subsidiaries, affiliates in terms of Section §§ 15 et seq. of the German Stock Corporation Act (Aktiengesetz), officers, directors, employees, agents and representatives (collectively, the “Proctorio Entities”).

**A. No Warranty.**

The Proctorio Entities make no warranty for: (i) the completeness, accuracy, availability, timeliness, security, or reliability of the Services or Content; (ii) any harm to Your computer system, loss of data, or other harm that results from Your access to or use of the Services or Content; (iii) the deletion of, or the failure to store or to transmit, any Content and other communications maintained by the Services; and (iv) whether the Services or Content will meet Your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from the Proctorio Entities or through the Services or Content, will create any warranty not expressly made herein.

**B. Links.**

The Services may contain links to third party websites or resources. You acknowledge and agree that the Proctorio Entities are not responsible for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by the Proctorio Entities of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from Your use of any such websites or resources.

**C. Limitation of Liability.**

Proctorio shall only be liable in the event of intent or gross negligence on the part of Proctorio, culpable personal injury (injury to life, limb or health), mandatory liability under the German Product Liability Act (Produkthaftungsgesetz) or an ordinary negligent breach of a material contractual obligation. A material contractual obligation is an obligation the fulfilment of which is essential to the proper performance of the Terms and on the observance of which You may regularly rely. In the event of an ordinary negligent breach of a material contractual obligation, the damage shall be limited to the typical damage foreseeable at the time of conclusion of the contract.

14. **General Terms.**

**A. Notices.**

All notices required under an applicable SaaS Agreement shall be in writing, in English, and sent by certified mail or email; to the address provided on the SaaS Agreement, and to Proctorio at:

Proctorio GmbH
Bahnhofstraße 18
85774 Unterföhring
Email: info@proctorio.de

**B. Assignment; Delegation.**

If You entered into a SaaS Agreement with Proctorio, You may not assign any of Your rights or duties under the SaaS Agreement, without Proctorio’s prior written consent. Proctorio may assign any SaaS Agreement, without consent, if there is a merger, sale, transfer, or other disposition of all or most of its stock or assets.

**C. Proctorio Testing Center Membership.**

If You entered into a SaaS Agreement with Proctorio, You agree to participate in any testing center program that Proctorio may require. Our current testing center program allows any educational institution’s Authorized End User to travel to any other Proctorio-participating institution and utilize that location’s testing center space (the ‘Proctorio Testing Center Program’). As a result, You must provide Your testing center facilities to an Authorized End User who received access to Proctorio’s services from another educational institution, without charge. You agree to comply with all policies and procedures: (i) we specify from time to time relating to Authorized End Users who wish to utilize Proctorio’s services from multiple institutions; and (ii) we may specify for the Proctorio Testing Center program.

**D. Payment.**

To the extent the Services or any portion thereof is made available for any fee or through a subscription, your access will be granted following payment of the applicable fees to Company. Your account and access to the Services may
be suspended in the event of non-payment of applicable fees.

You represent and warrant to Company that such payment information is true and that you are authorized to use the payment instrument. For recurring subscriptions, you will promptly update your account information with any changes (for example, a change in your billing address or credit card expiration date) that may occur.

E. Force Majeure.

Except for Payment, if either Party is prevented or delayed in performing its obligations by circumstances beyond its reasonable control, including, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, the failure or delay is not a material breach of the applicable SaaS Agreement, but the obligation will remain in full force and effect, and will be performed as soon as reasonably practicable after the termination of the relevant circumstances causing such delay, but if the Party is prevented from performing for more than ninety (90) days, the other Party may terminate the SaaS Agreement upon thirty (30) days' written notice.

F. Advertising.

If You entered into a SaaS Agreement with Proctorio, and gave prior written consent, we may reference and use Your name and trademarks, and disclose Proctorio's services for business development and marketing efforts, including on our website. Proctorio will not use any Customer Content to advertise or market to students or their parents. Proctorio may use de-identified data for advertising or marketing to schools.

G. Independent Contractors.

You and Proctorio will, at all times, act as independent contractors, and nothing contained in these Terms, or any other agreement, will be construed or implied to create an agency, partnership, or employer and employee relationship.

H. Waiver and Severability.

The failure of Proctorio to enforce any right or provision of these Terms, or any other applicable agreement, will not be deemed a waiver of such right or provision. If any provision of these Terms, or any other applicable agreement, is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect.

I. Controlling Law and Jurisdiction.

These Terms, any action related thereto, and all other agreements between You and Proctorio, unless otherwise stated, will be governed by German Law without regard to or application of its conflict of law provisions. The courts competent for the seat of Proctorio shall have exclusive jurisdiction over all claims, legal proceedings, or litigation arising in connection with the Services.

J. Entire Agreement.

These Terms are the entire and exclusive agreement between Proctorio and You regarding the Services (excluding other services for which You have an additional agreement with Proctorio), and these Terms supersede and replace any prior agreements between Proctorio and You regarding the Services.

We may revise these Terms from time to time. We will notify You of such amendment no later than six weeks before the amended Terms become effective. If You do not object to the amendments within a period of two weeks from receipt of the notification of the amendment, the amended Terms shall become contractually agreed. We will draw your attention to the aforementioned deadline and the legal consequences of its expiration. We may, however, terminate the agreement with three (3) months' notice if You object to the change. Any amendment to a SaaS Agreement, however, must be in writing made by the Parties, or their authorized representatives.

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