

B
 BROKEN ARROW PUBLIC SCHOOLS
Educating Today R *Leading Tomorrow*

Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: June 27, 2024

Contract/Agreement Vendor: Turnitin Greg Pebbles

Name of Vendor & Contact Person

gpebbles@turnitin.com
Vendor Email Address

Turnitin will provide plagiarism check software

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

Secondary Students

Reason/Audience to benefit

July 15, 2024
BOE Date

\$ 26,979.00
Amount of agreement

Person Submitting Contract/Agreement for Review: Tony Sappington

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: *Tony Sappington*

Does this Contract/Agreement utilize technology? YES/NO
If yes, Technology Admin: _____

Cabinet Team Member: *Karl Dyess*

Funding Source: 35/102 102-2230-653-000-0000-000-sites
Fund/Project OCAS Coding

Consent

Action

Accept and approve the RENEWAL agreement between Broken Arrow Public Schools and Turnitin. Turnitin will provide plagiarism check software for secondary students. This is year two (2) of a three (3) year agreement. Total contract amount is \$80,955.00. The cost to the district was \$26,733.00 in year 23-24. The cost to the district in year 24-25 is \$26,979.00 and will be paid with bond funds./T. Sappington

Summary

This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.

ORDER FORM



Turnitin, LLC

2101 Webster Street
Suite 1900
Oakland CA 94612
United States

Order Form No: Q-705038-4
Date: 18-Oct-2023
Expires On: 30-Nov-2023

Order form for **Broken Arrow Public Schools**
Proposed by Greg Peebles
Email: gpeebles@turnitin.com
Phone: (510) 764-7657

| Customer Information | |
|-----------------------------------|---|
| Billing Street: 701 S Main Street | Primary Contact: Dr. Natalee Morgan |
| Billing City: Broken Arrow | Primary Contact Email: nmorgan@baschools.org |
| Billing State/Province: OK | |
| Billing Zip/Postal Code: 74012 | Billing Contact: Broken Arrow Accounts Payable |
| Billing Country: United States | Email: accounting@baschools.org |
| Tax ID Number: | |

| Product Name | Service Start Date | Service End Date | Quantity | Amount |
|------------------------------------|--------------------|------------------|----------|---------------|
| Feedback Studio Enterprise License | 1-Dec-2023 | 30-Nov-2024 | 1 | USD 23,215.00 |
| Feedback Studio Enterprise License | 1-Dec-2024 | 30-Nov-2025 | 1 | USD 23,215.00 |
| Feedback Studio Enterprise License | 1-Dec-2025 | 30-Nov-2026 | 1 | USD 23,215.00 |
| Turnitin Originality | 1-Dec-2023 | 30-Nov-2024 | 1 | USD 3,518.00 |
| Turnitin Originality | 1-Dec-2024 | 30-Nov-2025 | 1 | USD 3,764.00 |



| Product Name | Service Start Date | Service End Date | Quantity | Amount |
|----------------------|--------------------|------------------|---------------------|---------------|
| Turnitin Originality | 1-Dec-2025 | 30-Nov-2026 | 1 | USD 4,028.00 |
| | | | Net Total: | USD 80,955.00 |
| | | | Gross Total: | USD 80,955.00 |

Product Descriptions

Feedback Studio Enterprise License Turnitin Feedback Studio: Similarity, Feedback, Grading, Grammar.
- Access for all Broken Arrow Senior HS and Freshman Academy students.
- Canvas integration.
- Draft Coach for Google Docs or MS Word for the web.

Turnitin Originality AI Detection Tool (2023 Early Adopter Pricing)
- Designed to evolve with future AI technology.
- Includes all future updates and enhancements.

Purchase Order Instructions

If you require a purchase order to submit payment, please follow the below guidance.

1. Please make your purchase order payable to Turnitin, LLC.
2. Your institution name and address must be on the purchase order.
3. The payment on the purchase order must indicate it is in USD and must equal the USD 80,955.00 amount of the order form or the payment amount described in the payment schedule below.
4. Email the purchase order and Order Form to the respective Turnitin representative listed above or orders@turnitin.com.

Payment Instructions

Upon processing your order each term/period will be billed 30 days before that terms service starts.

All payments are due net 30 days from the date of invoice. Payments are deemed late thereafter and may accrue interest at the lesser of 1.5% per month on the maximum rate and net period allowable under the applicable law that applies to this transaction.

Turnitin may charge VAT/ Indirect Taxes as applicable in the jurisdiction of the service recipient, unless your organization is covered by the Reverse Charge Rules, and provides us with a valid VAT/Indirect Tax ID proof along with the order form.

Products sold to certain states/territories are subject to tax. The sales tax stated on the order form should reflect the value of sales tax on the invoice. If the amount stated here is incorrect, or if a tax exemption certificate is applicable, please have the order form revised before finalization. No sales tax is charged when providing a valid exemption certificate. Please email certificate to ar@turnitin.com.

Cancellations may only be made within the first 30 days from account activation and only for accounts that have five or fewer uploads. Any return of amounts paid for license cancellations are subject to an administration fee of 15% of the license cost.

Custom Billing Terms

Payment Currency: USD

| Invoice Date | Payment Due Date | Payment Amount |
|--------------|------------------|----------------|
| 12/1/2023 | 12/31/2023 | 26985.00 |
| 12/1/2024 | 12/31/2024 | 26985.00 |
| 12/1/2025 | 12/31/2025 | 26985.00 |

Signed Order Form Instructions

| Please check the details at the top of page one. If any of them are blank or incorrect please amend below. | |
|--|--|
| Billing Address | |
| Billing Contact | |
| Billing Email (General billing email preferred) | |
| Tax ID Number | |

Signature Section

By accepting this order form, you agree to our general terms and conditions that are located at this URL: <http://go.turnitin.com/reg>

Acknowledged and agreed, as of the effective date.

| Broken Arrow Public Schools Signature |
|---------------------------------------|
| Signature |
| Printed Name |
| Printed Title |
| Date |

Looking for help using Turnitin?
Visit our 24-hr online Help Center

Master Registration Agreement

This **MASTER REGISTRATION AGREEMENT** ("Agreement") is by and between Turnitin, LLC, a California limited liability company ("Turnitin") and the Institution as identified in the applicable Order (or "Customer"). Turnitin's quotation to Institution is expressly conditioned on the terms and conditions of this Agreement. The Service (as defined below) is offered to Institution conditioned upon Institution's acceptance of the terms and conditions contained herein without modification. The terms and conditions of this Agreement shall govern any Orders (as defined below hereunder, unless modified and mutually agreed to in writing).

1. OVERVIEW. Turnitin has developed and operates a variety of unique services that assist with institutions' assessment with integrity, including some that allow educational institutions to check work for possible textual matches against Internet-available resources and Turnitin's own proprietary database. Institution desires to protect and promote academic integrity and wishes to subscribe to certain of the Services as tools to help in detecting and preventing plagiarism.

2. SERVICES LICENSE GRANT. As used in this Agreement, the term "Services" refers to any services provided by Turnitin or its wholly owned group companies (except for ExamSoft Worldwide LLC), including services purchased by Institution from time-to-time pursuant to an Order (defined below). During the Term, as defined in section 11 Term and Termination (a) below, and subject to Institution's compliance with the terms and conditions of this Agreement, Turnitin hereby grants to Institution a non-transferable, non-assignable, non-sublicensable, revocable and non-exclusive license to permit its educators, administrators and other users employed by the Institution ("Instructors") and students currently enrolled in the Institution ("Students") to use the following Services solely for its own internal purposes and as contemplated under this Agreement. Nothing hereunder shall be considered as "goods" or "work product".

- a. With respect to the Turnitin Feedback Studio, Turnitin Similarity, SimCheck and Turnitin Feedback Studio with Originality services and their components, this license shall extend to Instructors, but only for their use in classes offered through Institution.
- b. With respect to the iThenticate service, this license shall extend to Instructors, but only for faculty research (i.e., grant proposals, general research, and supplemental course materials) produced in connection with Institution. Institution shall be responsible for ensuring their Instructors comply with the terms of this Agreement.
- c. With respect to the Gradescope service, this license shall extend to the right to use,

reproduce, distribute, publicly perform, and display the Gradescope service as set forth herein, and in the Order. This license shall extend to Instructors, but only for their use in courses offered through Institution.

No other license is granted by implication, estoppel or otherwise. Institution shall be responsible for ensuring their Instructors and Students comply with the terms of this Agreement.

3. USE OF SERVICES - IN GENERAL. With respect to use of the Services, Turnitin shall not be responsible for internet and/or telecommunications connectivity needed to access the Services, and Institution shall, and shall ensure its Instructors and Students:

- a. use the Services for Institution's internal purposes only;
- b. not reverse engineer, decompile, disassemble, modify or create works derivative of the Services;
- c. not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Services, or directly or indirectly permit any third party to use or copy the Services. Institution will keep any passwords associated with the use of the Services in strict confidence, and will not share such passwords with any third party. Institution will be solely responsible for all use of the Services made with Institution's passwords, if any;
- d. use the Services solely in accordance with Turnitin's then current documentation;
- e. not remove any proprietary notices (e.g., copyright and trademark notices) from either the Services or any documentation, content, or reports provided by Turnitin;
- f. ensure its use of the Services complies with applicable local, state, and federal laws; and
- g. with respect to all Services, abide by the applicable Turnitin Policies (Privacy Policy, Acceptable Use Policy, EULA, and the applicable Terms of Use) provided on the Turnitin website, incorporated herein by this reference, as may be revised by Turnitin from time-to-time. Any such revisions to the Policies will be posted on the applicable website. Turnitin will make commercially reasonable efforts to notify Institution in writing of any material revisions, and in the event that Institution does not agree to the revised policy, Institution may terminate this Agreement by giving thirty (30) days written notice, and Turnitin shall pay to Institution the pro-rated amount of any prepaid annual subscription fees, calculated from the date of such termination. Continued use of the Services shall constitute Institution's acceptance of revisions to the Policies. In the event of a conflict between this Agreement and the Turnitin Policies, the terms of this Agreement shall prevail.
- h. not (i) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, nor (ii) use the Services to store or transmit malicious code, (iii) interfere with or disrupt the integrity or performance of the Services, or third-party data contained therein, or (iv) attempt to gain unauthorized access to the Services or its related systems or networks.

4. USE OF SERVICES - PER SERVICE

a. **Use of the Turnitin Feedback Studio services or its components (including Originality Check), or Turnitin Similarity or SimCheck or Originality.** With respect to use of the Turnitin Feedback Studio Service, Institution shall:

- i. not make statements to Students that Institution is using the Service in a given class when such class is not registered (Note: even within a particular class using the Service, for purposes of fairness and equal application, Turnitin strongly recommends requiring Student submission of all papers rather than submission by Instructors only of papers singled out by Instructor);
- ii. consider Turnitin's strong recommendation that the course syllabus of each course making use of the Service carry a notice substantially similar to the effect of the following: "Students agree that by taking this course all required papers may be subject to submission for textual similarity review to Turnitin.com for the detection of plagiarism. All submitted papers will be included as source documents in the Turnitin.com reference database solely for the purpose of detecting plagiarism of such papers. Use of the Turnitin.com service is subject to the Usage Policy posted on the website." If use of the Service is instituted after distribution of the syllabus, then Institution shall consider Turnitin's strong recommendation that equivalent written notice is provided by the Instructor to the Students; and,
- iii. consider Turnitin's strong recommendation that students enrolling at Institution receive clear notice similar to paragraph 3(e) above in their student handbook or comparable communication at the time of enrollment.

b. **Use of the iThenticate service.** With respect to use of the iThenticate Service, the license granted in this Agreement is restricted as follows:

- i. if the Institution becomes known as a service through which Students, researchers or other individuals can obtain papers or portions of papers for submission as their own original work (e.g., becomes or partners with a "paper or essay mill" -- a ghostwriting service that sells essays, papers, and other homework writing), the parties agree to meet and confer in good faith to address the issue. If the parties are unable to resolve the issue within thirty days, Turnitin may terminate this Agreement at its discretion without further obligation.

c. **Use of Gradescope service.** With respect to use of the Gradescope Service, Institution shall:

- i. grant Turnitin the irrevocable, perpetual, worldwide, sublicensable, transferrable, right to use institutional data submitted through Gradescope in compliance with applicable law.

5. SUSPENSION OF ACCESS. Turnitin may, in its sole discretion, suspend Institution's or any of its Instructors' or Students' access to the Services in order to (i) prevent damage to, or degradation of, the Services; (ii) comply with any law, regulation, court order, or other governmental request; (iii) otherwise protect Turnitin from potential legal liability; or (iv) address a breach of any policy or this Agreement. Turnitin shall use reasonable efforts to provide Institution with notice prior to or promptly following any suspension of the Services.

Turnitin shall restore access to the Services as soon as the event giving rise to suspension has been resolved.

6. REPORTS AND SOURCE DATABASE. With respect to Services that include reports evaluating textual sources and the database of source documents ("Source Database"), Institution agrees:

- a. to maintain any Turnitin notices (including legal notices relating to Turnitin's proprietary rights (e.g., copyright and trademark notices) and disclaimer) on the reports;
- b. to exercise its independent professional judgment in, and to assume sole and exclusive responsibility for, determining the actual existence of plagiarism in a submitted paper under the acknowledgement and understanding that the reports are only tools for detecting textual similarities between compared works and do not determine conclusively the existence of plagiarism;
- c. that any disclosure of a report to any third party is at the Institution's own risk; and,
- d. that for papers stored in the Source Database, it instructs Turnitin to retain such papers for the purpose of using such papers as source material to detect unoriginal text in other papers in the future, including after the Term, unless Institution's Turnitin Administrator instructs Turnitin to delete such papers.

7. TURNITIN OBLIGATIONS. Turnitin agrees to:

- a. use reasonable efforts to protect the security of accounts, passwords and the Source Database;
- b. comply with the then current Policies posted on the Turnitin or Gradescope websites, incorporated herein by reference;
- c. with respect to the Turnitin Feedback Studio, Turnitin Similarity, SimCheck and Turnitin Feedback Studio with Originality services and their components, enable Instructors to create Instructor accounts and, enable Students to create Student accounts in the Service; and,
- d. use reasonable efforts to make reports available online for a period of one hundred and eighty (180) days after the set archive date for a class, with subsequent access, as available, to be provided via request to www.turnitin.com/help.
- e. only process data provided by the Institution for the purpose of supporting the Services, and use aggregate and/or de-identified data for the purpose of improving the Services or creating new service offerings or features for its clients. Institution acknowledges that the processing of any aggregate and/or de-identified data for current and potential future Services is compatible with the purpose for which the data are originally processed. Institution hereby grants its express permission to Turnitin to process data in such ways.

8. OWNERSHIP.

- a. **Student ownership:** As between the parties, Students retain all copyright and ownership rights in their submitted papers, subject to Turnitin use rights provided in this Agreement.

b. **Turnitin ownership:** Turnitin owns all rights in and to the Services including any and all copyrights, patent rights, trade secrets, trademarks, service marks, trade names and other statutory or common law intellectual property or other proprietary rights related to the Services. Turnitin also owns including reports and all materials created by the Services, including the format of reports, (excluding any Institution or student personal information as defined under applicable laws), and all intellectual property rights related thereto. With the exception of the limited license granted in Section 2 Services License Grant, nothing contained herein shall be construed as granting Institution, Instructors, or Students any right, title, or interest in Turnitin's intellectual property or proprietary information. All rights in such items are expressly reserved to Turnitin. Institution acknowledges and agrees that Turnitin has the exclusive ownership of any aggregate data and the exclusive right to use aggregate data for the purposes stated herein.

c. **FERPA.** Institution designates Turnitin a "school official" within the meaning of FERPA 34 CFR Section 99.31. Turnitin will remain under the direction of Institution with respect to the use and maintenance of personally identifiable information and education records, as those terms are defined in FERPA 34 CFR Section 99.3, and Turnitin may use personally identifiable information and education records only as set forth under the Agreement and in compliance with applicable law.

9. ORDER; PRICING AND PAYMENT. Institution may order the Service under the terms and conditions of this Agreement via the following methods: 1) an Institution-issued Purchase Order, 2) a properly completed and fully executed Turnitin Service Pricing Agreement ("SPA"), 3) a properly completed and fully executed Turnitin Registration Agreement that includes substantially the same information as an SPA, or 4) as evidenced by Institution's payment of the applicable Service fee(s) via check or credit card (collectively, the "Order"). All Orders are deemed to include the terms and conditions of this Agreement, and all pre-printed clauses on Institution's Purchase Order are deemed deleted. All Orders are valid upon acceptance by Turnitin; Turnitin's acceptance and performance are expressly conditioned on the terms and conditions of this Agreement. Pricing shall be per the applicable Order, and shall also include the maximum usage of the Service permitted to Institution and Institution agrees not to exceed such usage without purchasing additional usage as per the Order. Unless prescribed otherwise within an accepted Order, all payments are due net thirty (30) days from the date of invoice. Payments are deemed late thereafter and shall accrue interest at the lesser of 1.5% per month or the maximum rate and net period allowable by New York state law.

10. SUPPORT. Turnitin shall provide reasonable email and phone support to Institution via Institution's sole appointed primary account administrator during Turnitin's normal support hours.

11. TERM AND TERMINATION.

a. **Term.** The term ("Term") of the Services under this Agreement shall be defined in the

applicable Order. Thereafter, the Agreement may be renewed on the mutual agreement of the parties for additional renewal Terms. Prior to expiration of a pending Term, Institution's Administrator will be presented with reminders when logging onto the Services regarding the need for renewal. The pricing for such renewal, and any new terms and conditions applicable to the renewal Term will be subject to the mutual agreement of the parties.

b. **Termination for Breach.** In the event of a material breach of this Agreement, the non-breaching party may provide the other party written notice of such breach and such other party shall have a period of thirty (30) days in which to cure the breach, except in the case of a payment breach, in which case the cure period shall be five (5) business days. In the event the breaching party fails to cure the breach within the cure period, in addition to whatever other remedies may be available at law or equity, the non-breaching party shall have the right to terminate this Agreement upon providing the other party written notice of termination.

c. **Effects of Termination; No Refunds.** Except as provided under Section Use of Services – In General (g); Section 12 Availability; or Section 18 Accessibility. Institution may not cancel or terminate any payment hereunder for its convenience or other cause, whether payment terms are in full or over the Term. In no termination event shall Institution be owed a refund of prepaid Fees.

d. **Survival.** Sections 4 Use of Services – Per Service (a)(i), (ii) and (iii), 6 Reports and Source Database, 7 Turnitin Obligations (a) and (b), 8 Ownership, 11 Term and Termination, 12 Availability, 13 Confidentiality, 14 Warranty and Disclaimer (b)-(e), 15 Indemnification, and 16 Governing Law and Dispute Resolution shall survive any expiration or termination of this Agreement, regardless of the reason for such termination, and shall continue in full force and effect thereafter.

12. AVAILABILITY. Turnitin shall use commercially reasonable efforts to make the Services available for access over the Internet at least 99% of the time during each month of the Term, except for scheduled maintenance and repairs, failures related to Institution's systems and Internet access, and any interruption in the Services due to causes beyond the control of Turnitin or that are not reasonably foreseeable by Turnitin, including, without limitation: loss or theft of data; interruption or failure of telecommunication or digital transmission links; Internet slow-downs or failure; failures or default of third party software, vendors, or products; and communications, network/internet connection, or utility interruption or failure. In the event Turnitin fails to achieve the foregoing availability requirement, Turnitin shall use commercially reasonable efforts to correct such loss or interruption as quickly as practicable. In the event Turnitin fails to achieve the foregoing availability requirement for three (3) consecutive months during the Term, then Institution may terminate this Agreement with thirty (30) days' written notice to Turnitin, and Institution shall be owed a refund of prepaid fees, prorated to the date of such termination.

13. CONFIDENTIALITY. To the extent Institution submits confidential information to the Service(s) ("Institution Confidential Information"), Turnitin may not use the Institution

Confidential Information other than as permitted by license grant to perform the Services. Further, Turnitin agrees not to disclose the Institution Confidential Information to any other party except as necessary to provide the Services.

14. WARRANTY AND DISCLAIMER; LIMITATION OF LIABILITY AND LIABILITY CAP.

a. **Warranty.** Turnitin warrants that to the best of its knowledge, the Service (excluding any Institution, Instructor, Student, or other third-party content) does not infringe the intellectual property rights of any third party. During the Term, Turnitin warrants that it shall use reasonable efforts to provide the Service and support as set forth herein and as described on Turnitin's website and published documentation. Notwithstanding the foregoing, Institution acknowledges that the Services are limited in scope by a finite database of material with which to compare a submitted work, a search process that might not have indexed the material that was used to create the submitted work, and non-access to certain proprietary databases of written work. Institution also acknowledges that reports indicate the possibility of textual matches and/or writing generated by artificial intelligence models or other third parties and that the actual determination of plagiarism or other misconduct is a matter subject to the professional judgment of Institution acting alone.

b. **Warranty Disclaimer.** EXCEPT AS SET FORTH IN SECTION 14 (a) ABOVE, THE SERVICES (INCLUDING THE REPORTS) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TURNITIN SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, NON-INFRINGEMENT AND TITLE. NO WARRANTY IS MADE THAT THE SERVICE WILL BE TIMELY, SECURE OR ERROR-FREE. IN JURISDICTIONS NOT ALLOWING THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES, TURNITIN'S WARRANTY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY NEW YORK LAW.

THE SERVICES ARE ACCESSED AND USED OVER THE INTERNET. INSTITUTION ACKNOWLEDGES AND AGREES THAT TURNITIN DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (e.g., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE INSTITUTION'S DATA, COMPUTERS, OR NETWORKS. TURNITIN SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES.

c. **Limitation of Liability.** EXCEPT FOR TURNITIN'S WILLFUL MISCONDUCT AND GROSS NEGLIGENCE, OR IN CASE OF BREACH OF SECTION 13 CONFIDENTIALITY, OR TURNITIN'S OBLIGATION TO INDEMNIFY INSTITUTION UNDER SECTION 15 INDEMNIFICATION (b) HEREUNDER, AND REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, TO THE EXTENT ALLOWED BY NEW YORK STATE LAW, INSTITUTION AGREES THAT IN NO EVENT WILL TURNITIN OR ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS OR LICENSORS, BE LIABLE FOR: (I) ANY DECISION

MADE OR ACTION TAKEN OR NOT TAKEN IN RELIANCE UPON THE INFORMATION PROVIDED THROUGH THE SERVICES; (II) FOR ANY LIABILITY ARISING FROM INSTITUTION'S DISCLOSURE OF A REPORT TO ANY THIRD PARTY, OR (III) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES OR LOSS OF PROFITS, EVEN IF TURNITIN HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.

d. **Liability Cap.** EXCEPT FOR TURNITIN'S WILLFUL MISCONDUCT AND GROSS NEGLIGENCE, OR IN CASE OF BREACH OF SECTION 13 CONFIDENTIALITY, OR TURNITIN'S OBLIGATION TO INDEMNIFY INSTITUTION UNDER SECTION 15 INDEMNIFICATION (b) HEREUNDER, AND TO THE EXTENT ALLOWED BY NEW YORK STATE LAW, TURNITIN AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS OR LICENSORS' TOTAL CUMULATIVE LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE GREATER OF THE AMOUNTS PAID TO TURNITIN BY INSTITUTION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, OR \$25,000.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN THOSE JURISDICTIONS TURNITIN'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. THE LIMITATION OF LIABILITY AND LIABILITY CAP SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL THEIR ESSENTIAL PURPOSE.

e. **Third-Party Products.** In connection with the Service, Turnitin may make available to User or Institution or may separately license certain third-party products (collectively, the "Third-Party Products"). Except as otherwise provided in the third-party licensor's license agreement, if any, accompanying the Third-Party Products, Institution shall have a limited, non-transferable (except to a successor entity), non-exclusive license to use the Third-Party Products solely in connection with the Services. EXCEPT AS OTHERWISE PROVIDED IN THE THIRD-PARTY LICENSOR'S LICENSE AGREEMENT, IF ANY, ACCOMPANYING THE THIRD-PARTY PRODUCTS, THE THIRD-PARTY PRODUCTS ARE PROVIDED "AS-IS," WITHOUT WARRANTIES OF ANY KIND AND TURNITIN AND THE THIRD-PARTY LICENSOR DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD-PARTY PRODUCTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL TURNITIN OR ANY THIRD-PARTY LICENSOR BE LIABLE TO INSTITUTION, THE INSTRUCTORS, STUDENTS, OR ANY THIRD-PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE THIRD-PARTY PRODUCTS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

15. INDEMNIFICATION.

a. Indemnification by Institution. TO THE EXTENT ALLOWED BY NEW YORK STATE LAW, Institution shall indemnify, defend and hold harmless Turnitin, and its affiliates, officers, directors, employees, agents, and licensors ("Indemnified Parties") from any and all losses, judgments, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) ("Losses") incurred by Turnitin's Indemnified Parties as a result of any claim, lawsuit, demand, cause of action, or proceeding brought by a third party relating to or arising from: (a) Institution's, an Instructor or Student's breach of its restrictions or obligations under this Agreement; or, (b) Institution's decision not to follow Turnitin's strong recommendations set forth in Sections 4 Use of Services – Per Service (a)(i), (ii), and (iii). To qualify for the foregoing indemnity obligation, the Turnitin Indemnified Parties must: (i) give Institution prompt written notice of any claim; and (ii) allow Institution to control, and fully cooperate with Institution in, the defense and all related negotiations.

b. Indemnification by Turnitin. TO THE EXTENT ALLOWED BY NEW YORK STATE LAW, Turnitin shall indemnify, defend, and hold harmless Institution and its Indemnified Parties from Losses incurred by Institution's Indemnified Parties as a result of any claim lawsuit, demand, cause of action, or proceeding brought by a third party that (i) Institution's licensed use of the Service, as permitted hereunder, infringes the U.S. patent or copyrights of that third party, or; (ii) Turnitin has violated any state or federal privacy law relating to information provided by Institution hereunder. To qualify for such defense and payment, Institution must: (i) give Turnitin prompt written notice of a claim; and (ii) allow Turnitin to control, and fully cooperate with Turnitin in, the defense and all related negotiations. Turnitin shall have no obligation to indemnify Institution under this Section to the extent the infringement claim arises from (i) any content or other intellectual property provided by Institution or any other third party, including third party content contained in the Source Database; (ii) Institution's failure to use the Services in accordance with this Agreement; or (iii) any matter for which Institution is obligated to indemnify Turnitin hereunder.

16. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall be governed by the laws of the United States of America and, unless as otherwise set forth in the Order, the State of NEW YORK ("Applicable State") excluding its conflict of laws rules. Unless as otherwise set forth in the Order, the parties hereby consent to the exclusive personal jurisdiction of and venue in the federal or state courts located in the jurisdiction in which the defendant in any such action resides. To the extent Institution is a political subdivision of the Applicable State set forth above, Institution acknowledges that it is entering this Agreement, including the provisions thereof, only to the extent authorized by that Applicable State law, including the opinions of the Applicable State's Attorney General. Any provision of this Agreement that is not authorized by or is inconsistent with Applicable State law, including the opinions of the state's Attorney General, is invalid.

17. INSURANCE. Turnitin represents that its current Commercial General Liability and Cyber Liability insurance limits are as presented in any Certificates of Insurance (evidence of coverage only) ("Turnitin COIs") provided, and that the limits therein shall not materially decrease during the Term. During the Term and on written request from Institution, Turnitin will provide Institution with the then-current Turnitin COIs.

18. ACCESSIBILITY. Services provided to Institution are in substantial conformance with Web Content Accessibility Guidelines 2.0, Level AA. Areas of non-conformance, and Voluntary Product Accessibility Templates, are available on the Turnitin website. In the event of a complaint over the accessibility of its Services by a Student user of the Services, Turnitin shall use commercially reasonable efforts to resolve such complaint at no additional cost to Institution. If Turnitin is unable to provide such resolution, Institution's sole remedy and Turnitin's sole liability shall be for Institution to terminate this Agreement by thirty (30) days' written notice to Turnitin, in which case Turnitin Institution shall be owed a refund of prepaid Fees, prorated to the date of such termination.

19. OTHER PROVISIONS. This Agreement together with the Order and Policies constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous written or oral agreements. Except as provided herein, all amendments or modifications to this Agreement must be agreed by an authorized signatory of each party. A party's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. If any provision of this Agreement is held to be invalid or unenforceable, such determination shall not affect the balance of the Agreement, which shall remain in full force and effect and the offending provision shall be modified to the minimum extent required to render the provision enforceable. Institution may not assign or transfer this Agreement. Turnitin may assign this Agreement in the event of acquisition, merger, corporate reorganization or similar change of control event. Turnitin may use and reference Institution's name as a subscriber to the Services in connection with truthful advertising or promotion of the Service. There are no third-party beneficiaries of this Agreement.

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