

## SERVICE AGREEMENT

**IMPORTANT NOTICE:** This Service Agreement ("Agreement") is a binding legal contract between the entity identified below ("Publisher") and Turnitin, LLC, a California limited liability company ("Turnitin"). By signing this Agreement OR by accessing, or using any of the Services (as described below), Publisher is agreeing to be bound by the terms of this Agreement. If Publisher does not agree to the terms of this Agreement, Turnitin is not willing to license any right to use or access the Services. In such event, Publisher may not access or use the Services.

1. **LICENSE GRANT.** As used in this Agreement, the term "Services" means the plagiarism detection software created and owned by Turnitin and offered for license under the trademarks "iThenticate" and "Turnitin" that compares submitted text materials ("Submitted Text") against a database to identify materials that may have been previously published or plagiarized, and produces a report showing instances of overlapping text ("Matching Report"). The Services shall also include any other reports, documentation, and other materials provided by Turnitin. Subject to the terms and conditions of this Agreement, Turnitin grants Publisher a nontransferable, non-exclusive license to use the Services. Publisher is responsible for ensuring its employees and agents comply with the terms of this Agreement, and shall be responsible for any breach by any of the foregoing parties. The Services are licensed, not sold. Except for the limited license granted above, Turnitin and its licensors retain all right, title and interest in the Services and all proprietary rights in and to the Services, including copyrights, patents, trademarks and trade secret rights.

2. **LIMITATIONS.** The license granted in this Agreement is restricted as follows:

(a) Use of the Services shall be for Publisher's internal purposes only, defined to include both Publisher's internal and external (i.e. editorial board review) steps in the editorial publishing process.

(b) Publisher may not reverse engineer, decompile, disassemble, modify or create works derivative of the Services.

(c) Publisher may 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. Publisher will keep any passwords associated with the use of the Services in strict confidence, and will not share such passwords with any third party. Publisher will be solely responsible for all use of the Services made with Publisher's passwords, if any.

(d) All use of the Services shall be in accordance with the Acceptable Use Policy set forth in the Terms and Conditions of Use for the Turnitin® and iThenticate® sites, incorporated herein by this

reference, as may be revised by Turnitin from time-to-time. Publisher will be notified of any revisions to the Acceptable Use Policy and any such revisions will be posted on the sites. Continued use of the Services after receipt by Publisher of notice of the revisions shall constitute Publisher's acceptance of such revisions to the policy.

(e) Publisher shall 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) Publisher shall use commercially reasonable efforts to ensure its use of the Service complies with applicable local, state, and federal laws.

### 3. PUBLISHER CONTENT :

(a) Publisher is a participant in the Crossref Similarity Check Service, which is a program, offered by Publishers International Linking Association, Inc. (doing business as Crossref) ("Crossref"), a tax-exempt business league of which Publisher is a member. Publisher grants Turnitin a non-exclusive, royalty-free license to use the full text of journal articles, conference proceedings, articles, books, book chapters, theses and dissertations, associated with DOIs registered with Crossref by the Participating Publisher (collectively, "Publisher Content") solely for purposes of creating matching reports (the "Matching Reports") that describe examples of text matching identified through use of the Services. The Non-textual components included as part of such articles, proceedings, books and chapters, theses and dissertations and datasets, and Submitted Text are not deemed to be "Publisher Content" for purposes of this Agreement. Copies of Submitted Text will be used and retained by Turnitin for the sole purpose of providing Matching Reports to Publisher. Publisher Content will be hosted on servers operated by Turnitin or its agents; however, Turnitin shall be responsible for any breach of this Agreement by its agents, including without limitation any failure to maintain the security of the Publisher Content in accordance with Section 3(d) below. The Publisher Content may be used solely for the purpose of indexing and comparing documents in order to generate the Matching Reports. By way of example but not limitation, Turnitin may not resell, make derivative products from or sub-license (except to the extent required to perform this Agreement) or repurpose (except to the extent required to perform this Agreement) the Publisher Content or any portion thereof. As between Turnitin and Publisher, Publisher shall retain all rights, title, copyright, and other intellectual or proprietary rights in the Publisher Content.

(b) Matching Reports provided to Publisher and to other publishers participating in the Crossref Similarity Check Service shall include access to the unformatted full text of the content item included in the Service in

which the identified overlapping text appears. For every content item with a registered Digital Object Identified ("DOI"), Turnitin will display the DOI and will link to the item via the DOI when information about the item is displayed as part of the Service. The Service may be used for the purpose of generating Matching Reports for other, third party users of the Services, provided however that such Matching Reports shall only include Snippets (as defined below) of the Publisher Content incorporated into the Services, as well as the DOI where available, and may not provide samples of or access to the full text of the Publisher Content. A "Snippet" is an excerpt from the Publisher Content in the form of displayed text that consists of a sample of overlapping text identified through the use of the Service. The Snippet shall be comprised of a limited excerpt of and no more than a total of 24 lines of surrounding text, and must include bibliographic metadata for the document where the matching occurs and a DOI-based link to the content on the Publisher's Web site.

(c) The Publisher Content or any part thereof shall be removed upon receipt of a request for removal from Publisher as promptly as is commercially reasonable, but in no event more than ten (10) business days from receipt of such request. Such request may be made at any time and for any reason whatsoever. The means for requesting such removal may include sending a request to an email address that Turnitin provides for this purpose, or by sending a written request by express courier. The notice of removal shall also specify the Publisher Content to be removed (i.e. specific DOIs).

(d) Turnitin will maintain the Publisher Content as a separate node in the Turnitin system database. Turnitin shall use commercially reasonable measures to secure the servers on which the Publisher Content resides from unauthorized access and use, and shall at a minimum utilize technology that is at least as secure as the protection it provides for its own proprietary content and for other third-party proprietary content included in the Turnitin system. Turnitin's obligation to provide security for the Publisher Content shall include, but not be limited to, the requirement that Turnitin update such technological protections as is commercially reasonable and as vulnerabilities in existing technological protections are identified. Publisher shall have the right, no more than twice a year, at a mutually agreed upon date and time, to conduct security audits of the systems on which the Publisher Content reside to ensure compliance with this Section. Such audits shall not unreasonably interfere with Turnitin's business and Turnitin shall have no liability for any breach of security or other failure to comply with the terms of this Agreement resulting from Publisher's activities in connection with the audit. In the event Publisher desires to use a third party to conduct the audit, such third party shall execute Turnitin's then current non-disclosure agreement before being granted access to Turnitin's facilities and systems.

(e) Publisher shall be entitled to the number of accounts with Turnitin that are reasonably necessary for Publisher to make use of the Service, with no set limit on the number of accounts on a per-publisher basis.

(f) Turnitin's crawler shall be directed to the Publisher's full text for crawling purposes via "Full Text URLs" (also known as "as-crawled URLs") provided by Publisher to Crossref and by Crossref to Turnitin.

(g) Publisher is responsible for verifying that its inhouse and outside editorial staff and reviewers do not use their access to the Service as a "back-door" method for getting free full-text access to included content and Services. The steps to be used to accomplish this should include (i) limiting access to the Service to those employees and outside contractors who, in Publisher's reasonable judgment, have a need to use the service; (ii) requiring each employee and contractor using the Service to register using his or her real name and current job title; (iii) limiting submissions to the Service for checking to those that pertain to a publication published by Publisher; (iv) taking reasonable steps to ensure that account Information and passwords used to access the Service are kept confidential and are not shared beyond the permitted users of the Service; (v) submitting to an audit of users, to be conducted by Turnitin at its own expense no more often than once per year, to determine if unauthorized users are being given or are getting access to the Services through Publisher; and (vi) taking reasonable steps to monitor use and potential abuse of the service.

(h) Publisher shall exercise its independent professional judgment in, and assume sole and exclusive responsibility for, determining the actual existence of plagiarism in the Submitted Text under the acknowledgement and understanding that the Matching Reports are only tools for detecting textual similarities between compared works and do not determine conclusively the existence of plagiarism; and

(i) Any disclosure of a Matching Report to any third party is at the Publisher's sole risk.

**4. SUSPENSION OF ACCESS.** Turnitin may, in its sole discretion, suspend access to all or any portion of the Services to (i) prevent damages 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 the Acceptable Use Policy or this Agreement. Turnitin shall use reasonable efforts to provide Publisher 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.

**5. PRICING AND PAYMENT.** Pricing for the Services and all licenses granted by Turnitin hereunder is set forth in Exhibit A. 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 allowable by law.

**6. SUPPORT.** Turnitin shall provide reasonable email and telephone support to Publisher via Publisher's sole appointed primary account administrator during Turnitin's normal support hours, with any additional support provided according to the terms of an Additional Support Agreement to be entered into by the parties.

**7. TERM AND TERMINATION.** The term ("Term") of this Agreement shall consist of the Initial Term and any Renewal Terms, as defined herein. The Initial Term of this Agreement shall commence on the last signature date below and extend for a period of one (1) year. Thereafter, provided Publisher has paid the applicable fees, the Agreement shall automatically renew for additional one (1) year periods (each a "Renewal Term"), unless either party gives the other party written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then current term. In the event of a material breach of this Agreement, the non-breaching party shall 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 fifteen (15) 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 nonbreaching party shall have the right to terminate this Agreement upon providing the other party written notice of termination. Sections 10 through 13 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. Upon termination of this Agreement, Turnitin shall promptly delete all Publisher Content from the Services and cease any and all use thereof. Turnitin will certify removal and destruction of the Publisher Content from its servers.

**8. PERFORMANCE METRICS.** Turnitin agrees that Publisher Content and associated DOIs and metadata and all updates and revisions thereto made available to it by Publisher shall be incorporated into the Service and indexed within twenty-hour (24) hours of such availability. Turnitin's time for performance hereunder shall be extended as necessary to accommodate any documented technological problems that interfere with Turnitin's timely performance hereunder, provided that Turnitin takes prompt steps to resolve such problems in the shortest period of time that is commercially reasonable. Notwithstanding the foregoing, consistent and repeated failure by Turnitin to comply with the time for performance set forth in this Section shall be deemed a material breach of this Agreement.

**9. AVAILABILITY.** Turnitin shall use reasonable efforts to make the Services, to the extent applicable, available for access over the Internet at least 98% of the time during each month of the Term, except for

scheduled maintenance and repairs, failures related to Publisher'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.

#### **10. WARRANTY AND DISCLAIMER; LIMITATION OF LIABILITY.**

(a) Limited Warranty; Disclaimer. Turnitin warrants that to the best of its knowledge, the Services (excluding any content or materials provided by Publisher or any third party) do not infringe the intellectual property rights of any third party. During the Term, Turnitin warrants that it shall use reasonable efforts to provide the Services and support as set forth herein and as described on Turnitin's site and published documentation. EXCEPT AS SET FORTH IN THIS SECTION 10(a), THE SERVICES (INCLUDING THE MATCHING 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, NONINFRINGEMENT AND TITLE. NO WARRANTY IS MADE THAT THE SERVICES WILL BE TIMELY, SECURE OR ERROR-FREE. IN JURISDICTIONS NOT ALLOWING THE LIMITATION OR EXCLUSION OF CERTAIN WARRANTIES, TURNITIN' WARRANTY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

(b) THE SERVICES ARE ACCESSED AND USED OVER THE INTERNET. PUBLISHER 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 PUBLISHER'S DATA, COMPUTERS, OR NETWORKS. TURNITIN SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES.

(c) REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, PUBLISHER 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

CONTAINED IN THE MATCHING REPORTS; (II) FOR ANY LIABILITY ARISING FROM PUBLISHER'S DISCLOSURE OF A MATCHING 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 AND LOSS OF PROFITS, EVEN IF TURNITIN HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.

(d) EXCEPT WITH RESPECT TO TURNITIN'S INDEMNITY OBLIGATION IN SECTION 11(b), TURNITIN AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS OR LICENSORS TOTAL CUMULATIVE LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT AND IN CONNECTION WITH THE SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS, IF ANY, PAID BY PUBLISHER FOR THE SERVICES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES; IN THOSE JURISDICTIONS TURNITIN' 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 OF THEIR ESSENTIAL PURPOSE.

#### **11. INDEMNIFICATION.**

(a) To the extent permitted by applicable law, Publisher shall defend and indemnify Turnitin and hold it and its affiliates, officers, directors, employees, agents, and licensors ("Indemnified Parties") harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by the Indemnified Parties as a result of any claim, judgment, or adjudication related to or arising from: (a) Publisher's breach of its obligations under this Agreement; or (b) Publisher Content. To qualify for the foregoing indemnity obligation, the Indemnified Parties must: (i) give Publisher prompt written notice of any claim; and (ii) allow Publisher to control, and fully cooperate with Publisher in, the defense and all related negotiations. Publisher shall have no obligation to indemnify Turnitin under this Section to the extent that a claim arises from (i) the Services (excluding the Publisher Content); (ii) Turnitin failure to use the Publisher Content and Submitted Text in accordance with the terms of this Agreement; or (iii) any matter for which Turnitin is obligated to indemnify Publisher hereunder.

(b) Turnitin shall indemnify, defend, and hold Publisher and hold it and its affiliates, officers, directors, employees, agents, and licensors ("Indemnified Parties") harmless from any and all claims, losses,

deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by the Indemnified Parties as a result of any claim, judgment, or adjudication related to or arising from a third party that (i) Publisher's licensed use of the Services, as permitted hereunder, infringes the copyrights or U.S. patent or other intellectual property rights of the third party; (ii) Turnitin has violated any state or federal privacy law relating to information provided by Publisher hereunder. To qualify for the foregoing indemnity obligation, the Indemnified Parties 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 Publisher under this Section to the extent the infringement claim arises from (i) any content or other intellectual property provided by Publisher, including the Publisher Content and the Submitted Text; (ii) any other content contained in Turnitin' databases against which works are compared for potential instances of plagiarism except to the extent that such claims arise from the use of the Services that would not otherwise have arisen from use of the content alone; (ii) Publishers' failure to use the Services in accordance with this Agreement; or (iii) any matter for which Publisher is obligated to indemnify Turnitin hereunder.

**12. GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement shall be governed by the laws of the United States of America and the State of California, excluding its conflict of laws rules. 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.

**13. GENERAL.** This Agreement constitutes 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 by actual hardcopy execution 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. Publisher may not assign or transfer this Agreement without the written consent of Turnitin, which consent shall not be unreasonably withheld or delayed. Turnitin may assign this agreement in the event of acquisition, merger, corporate reorganization or similar change of control event. Turnitin may, with Publisher's prior written permission, use and reference Publisher's name as a subscriber to the Services in connection with truthful advertising or promotion of the Services. There are no third party beneficiaries of this

Agreement. Turnitin shall not be responsible for any delays, errors, failures to perform, interruptions or disruptions in the Services caused by any acts of God, strikes, lockouts, riots, acts of war, changes in law or regulations, fire, flood, earthquake, storm, power failure or failures of the Internet.

14. **AUTHORIZATION.** By signing this Agreement OR by accessing, or using any of the Services, the undersigned indicates that he or she has the authority to bind Publisher to the terms of this Agreement.

AGREED AND ENTERED INTO as of the date written below.

**PUBLISHER**

**Technická univerzita v Liberci**

Se sídlem v: Studentská 2, Liberec 1, 46117

IČ: 46747885

DIČ: CZ46747885

Bankovní spojení: ČSOB Liberec

Účet číslo: 305806603/0300

Zastoupena: doc. RNDR. Miroslavem Brzezínou,  
CSc., rektorem TUL

*M. Brzezina*



Turnitin, LLC

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By: \_\_\_\_\_

Name: *Chris Caren*

Title: CEO

Date: 19 February 2019

\* Laura DiPiano for Chris Caren