LICENSE AGREEMENT (REVISION ASSISTANT)

This LICENSE AGREEMENT (REVISION ASSISTANT) ("**Agreement**") is entered into between **Turnitin, LLC**, a California limited liability company ("**Turnitin**") and the customer identified on the Order Form submitted in connection herewith and attached as Appendix A hereto ("**Licensee**"), and governs Turnitin's provision of the web-based writing assessment services currently known as "**Revision Assistant**" and Licensee's use thereof as described herein. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them on the Order Form.

1. License.

1.1 Grant of License. Turnitin grants Licensee, pursuant to the terms and conditions of this Agreement, a limited, revocable, nonexclusive, nontransferable right, during the Term (defined below), for Licensee and its authorized end users (collectively, "**Users**") to access and use Revision Assistant solely to assess writing samples (each, an "**Assessment**"), and for no other purpose whatsoever (collectively, the "**Authorized Use**"). The right granted under this Agreement applies only to Revision Assistant and does not extend to any other products, services or software offered or provided by Turnitin to Licensee or any third party. For the avoidance of doubt, the foregoing shall not be construed as granting Licensee any right to physical possession of Revision Assistant code, which shall remain at all times on Turnitin's systems. No other license is granted by implication, estoppel or otherwise.

1.2 Restrictions on Use.

(a) Licensee shall be entitled to use Revision Assistant during the Term subject to the terms and conditions set forth herein.

(b) Licensee agrees to use Revision Assistant only for the Authorized Use and in compliance with all laws, including without limitation, laws, ordinances, rules or regulations affecting exportation and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. pt 99. Licensee shall not knowingly permit any other person, entity, or third parties to access or use Revision Assistant without advanced written permission from Turnitin. Under no circumstances shall Licensee sell, lease, license, distribute, or otherwise transfer to a third party Revision Assistant or any copy thereof, in whole or in part, without Turnitin's prior written consent.

(c) Licensee shall not knowingly use Revision Assistant in any manner that does or could potentially undermine the security of the Revision Assistant. In addition, Licensee shall not knowingly, and shall not knowingly attempt to, (i) interfere with, modify or disable any features, functionality or security controls of the Revision Assistant, (ii) use Revision Assistant or any Turnitin Confidential Information (defined below) to develop a competing product or service, (iii) use Revision Assistant, or allow the transfer, transmission, export, or re-export of Revision Assistant or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency, (iv) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of Revision Assistant, including any screen displays, etc., or any other products or materials provided by Turnitin hereunder, (v) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Revision Assistant, or (vi) modify, disassemble, decompile or reverse engineer the Revision Assistant or otherwise attempt to discover the source code for the Revision Assistant.

(d) Licensee will comply with any limitations imposed by Turnitin on the frequency of access, calls and use of the Revision Assistant.

1.3 End User License Agreement. All Users must accept and be bound by Turnitin's then current standard end user license agreement for use of the Assessment Services ("**Turnitin Required Agreement**"). Turnitin shall notify Licensee of any material changes made generally applicable to the Turnitin Required Agreement. Licensee shall not make any modifications to the Turnitin Required Agreement and is not authorized to negotiate any modifications to the Turnitin Required Agreement; provided, nothing herein shall limit Licensee's right to provide additional terms and conditions to its Users in connection with the access and use of Revision Assistant.

2. **Term; Suspension of Access; Termination.**

2.1 Subject to earlier termination as provided herein, the term ("Term") of this Agreement shall consist of the Initial Term as stated in the Order Form and any Renewal Terms, as defined herein. After the Initial Term, the Agreement may be renewed on the mutual agreement of the parties for additional one (1) year renewal Terms (a "Renewal Term"). Renewal requires payment of Turnitin's then current annual fee as provided in Section 3.2 hereof.

2.2 Suspension of Access. Upon Turnitin's reasonable belief that tortious or criminal or otherwise improper activity may be associated with Licensee's utilization of Revision Assistant, Turnitin may, without incurring any liability temporarily suspend or discontinue providing access to Revision Assistant pending investigation and resolution of the issue or issues involved or terminate this Agreement in its entirety.

2.3 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.

2.4 Termination for Convenience. This Agreement may be terminated by either party without cause upon providing thirty (30) days' written notice to the other party prior to the end of the Term or any Renewal Term. In no termination event shall Licensee be owed a refund of prepaid fees.

3. **Licensee Fees.**

3.1 During the Initial Term, Licensee shall pay license fees to Turnitin as set forth on the Order Form.

3.2 During any Renewal Term, unless otherwise agreed by the Parties in writing, Licensee shall pay the then current annual fee. At least ninety (90) days prior to the expiration of the then current Term, Turnitin shall deliver to Licensee a notice of the annual fee to be charged for the pending Renewal Term.

4. **Ownership.** Licensee and Turnitin agree that Turnitin owns all right title and interest (including without limitation all copyright, patent, trademark and trade secrets rights) in and to Revision Assistant and any intellectual property created, made, conceived, reduced to practice, or authored by Turnitin, either solely or jointly with others, whether pre-existing or developed pursuant to this Agreement; provided however, that Licensee shall own and Turnitin hereby assigns to Licensee all right tile and interest in and to any training models developed pursuant hereto. All proprietary notices and markings of Turnitin appearing on or through use of Revision Assistant are the property of Turnitin. Licensee hereby grants to Turnitin, its affiliates, vendors, service providers, and licensors a non-exclusive, royalty-free, perpetual, worldwide, irrevocable license, during the Term of this Agreement, to use the papers, responses, essays or other content a User submits for review as part of the use of Revision Assistant, as well as feedback and results, for the limited purposes of a) providing the assessment services through Revision Assistant, and b) for improving the quality of the services provided by Turnitin generally.

5. **Confidentiality.** Licensee agrees that in the performance of this Agreement, Licensee will have access to confidential, proprietary or trade secret information owned or provided by Turnitin relating to software computer programs, object code, source code, marketing plans, educational instruction, business plans, customer lists, financial information, product specifications, business practices and other data ("**Confidential Information**"). To the extent allowed by applicable law, Licensee shall maintain the confidentiality of all Confidential Information and not sell, license, publish, display, distribute, disclose or otherwise make available any Confidential Information to any third party nor use such information except as expressly authorized by this Agreement. Licensee shall not disclose, to the extent allowed by applicable law, any such Confidential Information or any other proprietary matter or thing to any other persons or entities without the prior written consent of Turnitin. Licensee shall not have any obligations with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by a receiving party from a third party; (iii) is independently developed by the receiving party without access to or use of the Confidential Information; or (iv) is required to be disclosed by law provided the receiving party has promptly notified the disclosing party of such requirement and allowed the disclosing party a reasonable time to oppose such requirement.

6. **Disclaimer OF Warranty.** TURNITIN IS PROVIDING ACCESS TO REVISION ASSISTANT "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTIES OF ANY KIND. TURNITIN SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE REVISION ASSISTANT.

7. Limitation of Liability. IN NO EVENT WILL TURNITIN BE LIABLE TO LICENSEE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL THE TOTAL LIABILITY OF Turnitin TO LICENSEE UNDER THIS AGREEMENT, INCLUDING LIABILITY ARISING OUT OF CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNTS PAID BY LICENSEE TO Turnitin HEREUNDER. 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 OF THEIR ESSENTIAL PURPOSE.

8. **Indemnification.**

a. Indemnification by Licensee. TO THE EXTENT ALLOWED BY IOWA STATE LAW, Licensee 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 any breach of this Agreement by the Customer or any use of Revision Assistant or any Assessment by Licensee or any third parties.

b. Indemnification by Turnitin. TO THE EXTENT ALLOWED BY IOWA STATE LAW, Turnitin shall indemnify, defend, and hold Licensee harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses incurred by Licensee as a result of any claim by a third party that (i) Licensee's licensed use of the Services, as permitted hereunder, infringes the U.S. patent or copyrights of the third party; (ii) Turnitin has violated any state or federal privacy law relating to information provided by Licensee hereunder. To qualify for such defense and payment, Licensee 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 Licensee under this Section to the extent the infringement claim arises from (i) any content or other intellectual property provided by Licensee or any other third party, including third party content contained in the Source Database; (ii) Licensee's failure to use the Services in accordance with this Agreement; or (iii) any matter for which Licensee is obligated to indemnify Turnitin hereunder.

9. **Governing Law and Dispute Resolution.** This Agreement shall be governed by the laws of the United States of America and the State of Iowa, 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 Polk County, Iowa.

10. **Other Provisions.** 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. Each party is an independent contractor and nothing herein shall constitute or create a partnership, joint venture, or fiduciary relationship. Neither party has the right or authority to make any promises on behalf of or bind the other party in any respect. Except as provided herein, all amendments or modifications to this Agreement must be by actual hardcopy execution by an authorized signatory of each party. Neither party will be liable for any failure or delay in performance under this Agreement that is due to any event beyond the reasonable control of such party, including without limitation, telecommunications failures, war, riot, act of God, or government actions. 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. Licensee 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 shall make commercially reasonable efforts, subject to confidentiality obligations, to notify Licensee of such assignment. There are no third party beneficiaries of this Agreement.

11. Termination for Non-Appropriation of Funds. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by Licensee are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then Licensee will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding. Licensee will promptly provide written notice of such termination to Turnitin. In no such termination event shall Licensee be owed a refund of prepaid fees.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 23rd day of August, 2016.

Turnitin, LLC

By: _____ *

Name: Chris Caren

Title: CEO

* Laura DiPiano for Chris Caren

Des Moines Independent Community School District (Licensee)

By: Nick Lenhardt

Name: Nick Lenhardt

Title: Controller