

CONTRACT NAME: AGREEMENT BETWEEN TURNITIN, LLC AND THE DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This licensing agreement between Turnitin, LLC and DJUSD provides a service that allows educational institutions to check student work for possible textual matches against Internet-available resources. This is a tool for promoting academic integrity and preventing plagiarism at Davis Senior High School.

FISCAL IMPACT: The cost is \$5,573 for the 2017-2018 year and paid from site general allocation funds.

REGISTRATION AGREEMENT

This **REGISTRATION AGREEMENT** ("Agreement") is made as of **July 19, 2017**, (the "Effective Date"), by and between **TURNITIN, LLC**, a California limited liability company ("Turnitin") and **Davis Joint Unified School District** ("Institution" or "Customer").

1. OVERVIEW. Turnitin has developed and operates a unique service that allows educational institutions to check student work for possible textual matches against Internet-available resources and its own proprietary database (the "Service"). Institution desires to protect and promote academic integrity in its curriculum and students and wishes to subscribe to the Service as a tool for detecting and preventing plagiarism.

2. SERVICES LICENSE GRANT. During the Term and subject to Institution's compliance with the terms and conditions of this Agreement, Turnitin hereby grants to Institution a non-transferable, non-exclusive license to use the Service. This license shall extend to instructors employed by the Institution ("Instructors"), but only for their use in classes offered through Institution and provided that Instructors shall be subject to the terms and conditions of this Agreement and shall be bound by its provisions as members of Institution. Institution shall be responsible for ensuring their Instructors comply with the terms of this Agreement. No other license is granted by implication, estoppel or otherwise.

3. USE OF SERVICE. With respect to use of the Service, Institution shall:

- a. abide by the Acceptable Use Policy set forth in the Usage Policy for the Turnitin.com site, incorporated herein by this reference, as may be revised by Turnitin from time-to-time. Any such revisions to the Acceptable Use Policy will be posted on the Turnitin.com site. Continued use of the Service shall constitute Institution's and its Instructors' acceptance of future revisions to the policy;
- b. use the Service only in connection with classes offered in its own curriculum, to its own students ("Students") for the purpose of submitting Student work for evaluation and shall not rent, lease or provide access to or benefits from the Service to any other institution or individual;
- c. use reasonable efforts to retain the confidentiality of any Service passwords;
- d. 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);
- e. consider Turnitin's strong recommendation that the course syllabus of each course making use of the Service carry a notice substantially 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 Turnitin.com site." 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;
- f. 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; and, Turnitin may, in its sole discretion, suspend Institutions or any of its Instructor's or Student's access to the Service to (i) prevent damages to, or degradation of, the Service; (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 set forth in the Usage Policy for the Turnitin.com site. Turnitin shall use reasonable efforts to provide Institution with notice prior to or promptly following any suspension of the Service. Turnitin shall restore access to the Service as soon as the event giving rise to suspension has been resolved.

4. SIMILARITY REPORTS AND SOURCE DATABASE. With respect to reports evaluating textual sources ("Similarity Reports") and the database of source documents ("Source Database"), Institution agrees:

- a. to maintain any Turnitin's notices (including legal notices relating to Turnitin's proprietary rights (e.g., copyright and trademark notices) and disclaimer on the Similarity 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 Similarity Reports are only tools for detecting textual similarities between compared works and do not determine conclusively the existence of plagiarism;
- c. any disclosure of an Similarity Report to any third party is at the Institution's own risk; and,
- d. all papers submitted by Institution and/or its Instructors and Students shall be retained in the Source Database solely for the purposes of using such papers as source material to detect potential plagiarism of such papers in the future, for access by the instructor as an archive of submitted work, and for peer review if the instructor enables such option, except as expressly authorized by Students and/or Instructors.

5. TURNITIN OBLIGATIONS. Turnitin agrees to:

- a. enable Instructors and/or account administrators to create Instructor accounts and enable Students to create Student accounts in the Service, subject to their agreement to be bound by and adherence to, as applicable, this Agreement, and the Usage Policy on the Turnitin.com Site;
- b. create an Similarity Report for each submitted paper and to use reasonable efforts to make such Similarity Report 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;
- c. use reasonable efforts to protect the security of accounts, passwords and the Source Database;

d. comply with the then current Privacy Policy posted on the Turnitin site, incorporated herein by this reference.

6. OWNERSHIP. As between the parties, subject to the licenses granted herein and the underlying ownership rights of Students in and to the submitted papers, Turnitin owns all rights in and to the Service and all materials created by the Service, including the format of Similarity Reports, and all intellectual property rights related thereto. With the exception of the limited license granted in Section 2, 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.

7. PRICING AND PAYMENT. Pricing shall be per Turnitin's Service Pricing Agreement ("SPA"), incorporated herein as Exhibit A. The SPA 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 SPA. 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 California law.

8. 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, with any additional support provided according to the terms of an Additional Support Agreement to be entered into by the parties.

9. TERM AND TERMINATION.

a. **Term.** The term ("Term") of this Agreement shall consist of an initial Term and any renewal Terms. The initial Term of this Agreement shall commence on the date set forth in the SPA and extend for a period of one (1) year or for the period of time specified in the SPA. Thereafter, the Agreement may be renewed on the mutual agreement of the parties for additional one (1) year renewal Terms. Prior to expiration of a pending Term, Institution's Administrator will be presented with reminders when logging onto the Service 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. **Survival.** Sections 3(d), 4, 5(c)-(d), 6, and 9-13 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.

10. AVAILABILITY. Turnitin shall use commercially reasonable efforts to make the Service 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 Institution's systems and Internet access, and any interruption in the Service 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.

11. 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 site and published documentation. Notwithstanding the foregoing, Institution acknowledges that the Service is 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 only and that the actual determination of plagiarism is a matter subject to the professional judgment of Institution acting alone.

b. **Warranty Disclaimer.** EXCEPT AS SET FORTH IN SECTION 11(a) ABOVE, THE SERVICE (INCLUDING THE SIMILARITY REPORTS) IS 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 CALIFORNIA LAW.

THE SERVICE IS 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.** REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, TO THE EXTENT ALLOWED BY CALIFORNIA 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 SERVICE; (II) FOR ANY LIABILITY ARISING FROM INSTITUTION'S DISCLOSURE OF A SIMILARITY 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. **Liability Cap.** TO THE EXTENT ALLOWED BY CALIFORNIA STATE LAW, TURNITIN AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS OR LICENSORS' TOTAL CUMULATIVE LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE SERVICE, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNTS PAID TO TURNITIN BY INSTITUTION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVEN RISE TO LIABILITY. 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.
- e. **Third-Party Products.** In connection with the Service, Turnitin may make available to user, or Customer 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, Customer 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 THE THIRD PARTY LICENSOR BE LIABLE TO CUSTOMER 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.

12. INDEMNIFICATION. TO THE EXTENT ALLOWED BY CALIFORNIA STATE LAW, Institution 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) Institution's breach of its obligations under this Agreement; or, (b) Institution's decision not to follow Turnitin's strong recommendations set forth in Section 3(e)-(f). To qualify for the foregoing indemnity obligation, the 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.

13. 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.

14. OTHER PROVISIONS. If subscription to the Service is via an individual department, all provisions applying to an Institution herein shall be deemed to apply to the department. 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. 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 Service in connection with truthful advertising or promotion of the Service. There are no third party beneficiaries of this Agreement.

ACKNOWLEDGED AND AGREED, as of the Effective Date:

TURNITIN, LLC

By: _____ *

Date: _____

Print Name: Chris Caren

Print Title: CEO

2101 Webster Street, Suite 1800, Oakland CA 94612

* Laura DiPiano for Chris Caren

Davis Joint Unified School District

By:  _____

Date: 8-1-2017 _____

Print Name: Bruce E. Colby _____

Print Title: Chief Business Officer _____

Address: 526 B Street _____

Davis, CA 95616 _____

EXHIBIT A
SERVICES PRICING AGREEMENT

This **Services Pricing Agreement** ("SPA") is Exhibit A of the Registration Agreement entered into between **Turnitin** and **Davis Joint Unified School District** as of the Effective Date.

PRICING: Institution shall pay a **Service fee** ("Fee") in the total amount of **\$ 5,752.50 US****, for a Turnitin Feedback Studio License (including Similarity Check, Online Grading and Peer Review) for up to **1,750 Students** at Davis Senior High School, for the Term. The Service shall include unlimited submissions of papers, unlimited classes and unlimited Similarity Reports for the Term. If indicated below, the Fee also includes Training fees as applicable.

Payment is 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 California law.

**** IMPORTANT TAX INFORMATION:** Products sold to certain states are subject to tax. Estimated Tax above (if any) is not final. Invoice will reflect Applicable Tax (state and local). No sales tax is charged when provided a valid exemption certificate. If you have a valid tax exemption certificate, please email it to: ar@turnitin.com

TERM: The Term is twelve (12) months from **August 22, 2017 through August 21, 2018**.

OPTIONAL SERVICES: As may be completed below, Institution orders the following Training, which shall be governed by the terms and conditions as forth in http://turnitin.com/en_us/turnitin-training-terms-and-conditions, and this SPA:
N/A

☐ **In-Person Training** [type].
☐ **Online Training** [type].

ACKNOWLEDGED AND AGREED, as of _____, 2017:

TURNITIN, LLC

By: _____ *

Date: _____

Print Name: Chris Caren

Print Title: CEO

2101 Webster Street, Suite 1800
Oakland CA 94612

* Laura DiPiano for Chris Caren

Davis Joint Unified School District

By:  _____

Date: 8-1-2017

Print Name: Bruce E. Colby

Print Title: Chief Business Officer

Billing Address: 315 14th Street
Davis, CA 95616

Billing Email Address: kprien@djusd.net

EXHIBIT B

APPENDIX

between Davis Joint Unified School District and Turnitin,

LLC For California Assembly Bill 1584 and Senate Bill 1177

Compliance re: California Education Code Section 49073.1

WHEREAS, Davis Joint Unified School District (“Institution”) is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 (“AB 1584”), Senate Bill 1177 (“SB 1177”), the California Education Code, the Children’s Online Privacy and Protection Act (“COPPA”), and the Family Educational Rights and Privacy Act (“FERPA”);

WHEREAS, AB 1584 and SB 1177 require, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party service provider must include certain terms; accordingly, terms used in this Exhibit for purposes of AB 1584 and SB 1177 compliance, such as, but not limited to, “pupil”, “pupil records”, and “pupil-generated content”, are defined in Education Code section 49073.1;

WHEREAS, Institution and Turnitin, LLC (“Turnitin”) desire to have the contemplated Registration Agreement and related Service comply with AB 1584 and SB 1177 as applicable.

NOW, THEREFORE, the Parties agree as follows:

1. The term of this Exhibit B shall expire on the termination date stated in the contemplated Agreement or in any amendment to such Agreement, whichever controls.
2. Pupil records obtained by Turnitin from Institution continue to be the property of and under the control of the Institution.
3. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows: Each end user of the Services, including pupils, has his own Turnitin account with login. Once logged in, the pupil can edit his user information or submit, resubmit or download paper submissions.
4. The procedure by which a pupil may transfer pupil-generated content to a personal account is outlined as follows: A pupil can log in to Turnitin and download his submitted papers to his local machine.
5. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol: Use the pupil's login to edit user information or resubmit a paper.
6. Turnitin shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures: Turnitin employees sign and adhere to Turnitin's internal security and privacy policy. Data is stored and backed up at secure data centers.
7. In the event of an unauthorized disclosure of a pupil's records, Turnitin shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure: Turnitin will report such unauthorized disclosure to the Institution, and will work at Institution's direction on further notifications.
8. Turnitin shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Agreement.
9. Turnitin certifies that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Registration Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure: Pupils may delete their Turnitin account at any time, though Turnitin will not delete accounts automatically. Pupils may request deletion of submitted papers by submitting the request to their Instructor, who may delete the paper from his inbox, or by submitting the request to Institution's Turnitin Administrator, who may instruct Turnitin Support to delete the paper(s).
10. Institution and Turnitin shall work together to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure: 34 CFR 99.31 (a) provides that a contractor, consultant, volunteer or other party performing a service for the institution may receive education records provided that the recipient uses and processes the information consistent with the instructions of the school system. In this context, Turnitin is performing part of the grading function for instructors, and all use of the pupil data is for the direct and indirect benefit of the instructor and the Service. Further:
 - a) Turnitin expects and suggests that institutions shall comply with FERPA's notice requirements regarding the use and disclosure of directory and non-directory education records so that pupils and parents are aware that the school(s) may engage service providers.

- b) Turnitin enables a school's compliance with FERPA whether the instructors have each pupil forward papers to Turnitin prior to formal submission or after formal submission via a learning management system ("LMS") that is integrated with Turnitin.
- c) Institutions are free to inspect or audit our services to assure themselves that all information is used only for the purposes of assisting instructors.
- d) The data is kept secure at all times and are only used for purposes of assisting the instructor in assessing the assignment.
- e) Turnitin includes option of having assignments submitted by pupils who can keep their identity secret by using a pseudonym and by submitting papers in formats that contain little if any identifying metadata. This reduces the chance of our collecting and processing personal data in these instances.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit B of this _____ day of _____, 2017.

Turnitin, LLC

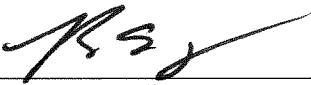
By: _____ *

Name: Chris Caren

Title: CEO

* Laura DiPiano for Chris Caren

Davis Joint Unified School District (Institution)

By:  _____

Name: Bruce E. Colby

Title: Chief Business Officer