



## SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this "**Agreement**") is entered into as of 6/12/2019 (the "**Effective Date**"), by and between **Terra Dotta, LLC** a North Carolina limited liability company having a place of business at 101 Conner Drive, Chapel Hill, North Carolina 27514 ("**Terra Dotta**") and **The University of North Texas** with its principal address of 1155 Union Circle, Denton, TX 76203-5017 ("**Client**").

### 1. Introduction.

(a) This Agreement supersedes and replaces in their entirety the previously-executed Master License Agreement dated December 31<sup>st</sup> 2009 and all related schedules, amendments and statements of work (the "Prior Agreements") between the parties.

(b) Under the terms of this Agreement, Terra Dotta will provide Client on a "software as a service" basis with use of certain software which, together with the implementation, consulting, hosting and support services provided by Terra Dotta, and all updates to these items made available hereunder, shall constitute the "Service." The parties will agree from time to time on one or more Commercial Terms Exhibits (each, an "Exhibit") that reference this Agreement and that provide information and terms regarding the Service and associated fees. The term "Software" means Terra Dotta's proprietary software identified in the Exhibit and made available to Client on a hosted basis as part of the Service, all user manuals, guides and other documentation for the Software ("Documentation") made available to Client, and all updates and new versions of all such items. Terra Dotta may provide or perform certain parts of the Service through third-party vendors and subcontractors, including in connection with a third-party technology hosting facility.

### 2. Service.

(a) Terra Dotta will provide the Service to Client during the term of the applicable Exhibit, subject to the terms herein and in such Exhibit. Client may use and access the Service and Software solely through one or more Terra Dotta-designated web sites ("**Sites**"). Client's rights to use the Service are non-exclusive and non-transferable. Client agrees to comply with all applicable federal, state, local and foreign laws, rules and regulations in connection with its use of the Service, and to not use the Service in support of any criminal, fraudulent, or illegal endeavors.

(b) The Service may be used and accessed for Client's own purposes and only by: (a) Client's employees and authorized agents and Client's contractors while doing work for Client, (b) students enrolled at Client or in a program associated with Client, and (c) other persons interested in enrolling at Client or in a program associated with Client, each using the Service for its intended purpose ("**Authorized Users**"). Independent contractors may use the Service only for the benefit of Client and not for their own or any other company's business operations.

(c) Client acknowledges that Terra Dotta maintains Terms of Use for the Service, located at <http://www.terraddotta.com/terms-of-use.html> (the "Terms of Use"), and that Authorized Users will be required to accept the Terms of Use. Client will not take any steps to hinder or prevent Authorized Users from accepting the Terms of Use, or to restrict Terra Dotta's enforcement of the Terms of Use with respect to Authorized Users. For clarity, nothing in the Terms of Use will modify the terms of this Agreement, and in the event of any conflict between the Terms of Use and the terms of this Agreement as applied to Client's employees and authorized agents, the terms of this Agreement shall apply.

(d) Terra Dotta will use commercially reasonable efforts to make the Service available on a 24 hours a day, 7 days a week, and 365 days a year basis, subject to Section 13(e) below and excluding downtime for maintenance purposes.

(e) Terra Dotta regularly changes and enhances its Service and may modify the Service from time to time without notice to Client.

(f) Terra Dotta will not be obligated to provide any services not set forth in this Agreement or an Exhibit. However, upon agreement in writing in any Exhibit to this Agreement, a separate Statement of Work, or other such writing approved by Client, Terra Dotta shall provide additional services ("**Additional Services**") at Terra Dotta's then-current rates. Additional Services include, but are not limited to the following: (i) on-site service of any kind; (ii) installation, data conversion, or system integration services; (iii) consulting; (iv) custom development; (v) technical services; (vi) service or maintenance of third-party software, operating software, hardware, or other equipment; (vii) services caused by Client's fault, misuse, negligence or failure to perform Client's responsibilities; and (viii) services caused by a malfunction of or problem with any product or goods other than those licensed by Terra Dotta.

(g) TD Connect:

- (i) The Service may include TD Connect (or similar functionality), which is a Terra Dotta integration framework consisting of APIs and screens within the Service for enabling third-party vendors to initiate access by Authorized Users to their solutions through the Service. It is entirely Client's decision which, if any, third-party products and services will be made available to Authorized Users through TD Connect.
- (ii) Services, content and technology provided by third parties and made available through TD Connect are referred to herein as "**Third-Party Services**". Client acknowledges and agrees that the applicable supplier of any Third-Party Services may require the execution of a separate service, license, or other agreement ("Third-Party Agreement"), either by Client or by the Authorized Users. The Third-Party Service is provided solely under the terms of that separate Third-Party Agreement.

- (iii) Client agrees that Terra Dotta is not a party to, and is not liable for breaches of, any Third-Party Agreement. Terra Dotta assumes no obligation or liability for: (1) the functionality or performance of Third-Party Services, including their content, accuracy, or reliability, or (2) the acts and omissions (including with respect to privacy practices) of the suppliers of Third-Party Services. Client acknowledges that a Third-Party Agreement might give the applicable third-party supplier rights with respect to Authorized User data beyond those allowed by these Terms or Terra Dotta's Privacy Policy. Terra Dotta does not guarantee that a third-party supplier will comply with its agreement with Terra Dotta or its Third-Party Agreement with Client or any Authorized User.

### 3. Support and Maintenance.

(a) Terra Dotta will provide general advice on the operation and use of the Service to Client's designated Contact Persons (defined below) and assistance with suspected failures of the Service to operate substantially in accordance with its Documentation ("**Errors**") that are reported to Terra Dotta. If a reported Error causes the Service or any material part to be inoperable, or if such Error substantially adversely affects Client's use of the Service, Terra Dotta will use commercially reasonable efforts either to correct the Error or to provide a workaround as expeditiously as possible. Terra Dotta does not warrant or represent that all Errors can and will be corrected. Certain Errors may be addressed by reasonable workarounds or updated Documentation.

(b) Client agrees to provide end-user support to Authorized Users of the Service. When Authorized Users encounter a problem with the Service, they must seek assistance from Client's support contacts. Client may designate up to six (6) "**Contact Persons**" to communicate with Terra Dotta on support questions. Before contacting Terra Dotta with a question, a Client Contact Person shall recreate and verify the alleged problem and shall take reasonable steps to resolve the question, including without limitation by reviewing the Documentation or searching Terra Dotta's knowledgebase system and other support resources. If a Contact Person can replicate the problem (e.g., using a different computer, browser and/or login ID), the problem should be referred to Terra Dotta by Client through Terra Dotta's support website (<http://support.terradotta.com>). Terra Dotta shall have reasonable access to Client's staff, system and data and Client shall provide information and perform tasks as reasonably requested by Terra Dotta to aid in the resolution of problems.

(c) Terra Dotta may identify errors arising from: (i) non-Terra Dotta hardware or software; or (ii) improper use, operation, or neglect of the Service. In such cases Terra Dotta reserves the right to charge Client for correcting such errors at then-current rates for services.

(d) Technical requirements for use of the Service are found at <https://techdocs.terradotta.com/specifications/system-requirements> as may be updated from time to time.

(e) Terra Dotta may use any feedback regarding any suggested improvements to the Service provided by Client for any purpose, including without limitation to modify, supplement, or improve the Service, without payment or compensation to Client.

(f) All support Services will be provided in English.

### 4. Client Responsibilities.

(a) Client agrees that all user information provided to Terra Dotta by Client and Authorized Users, whether for purposes of obtaining a user name and password or otherwise, will be accurate and complete in all respects. Client further acknowledges that it is solely responsible for maintaining the confidentiality of its Authorized Users' user names and passwords. Only one individual may access the Service at the same time using the same user name and password. Client agrees to notify Terra Dotta immediately of any unauthorized use of any Authorized User's email address, user name or password, or any other breach of security regarding the Service of which Client becomes aware. Client shall be fully responsible for use of the Service by Authorized Users and their compliance with the terms of this Agreement.

(b) Client is responsible for any violation of this Agreement or the Terms of Use by Authorized Users. Client agrees to promptly notify Terra Dotta if Client becomes aware of any Authorized User's breach of this Agreement or the Terms of Use.

(c) Client is solely responsible for the accuracy and sufficiency of information and materials input or delivered by Client or its Authorized Users as part of the Service (the "**Client Data**"), and acknowledges that Terra Dotta has no responsibility or intent to review or monitor any Client Data.

(d) Client will provide Terra Dotta with cooperation, information, resources, access to Client-owned and licensed systems, as outlined in this Agreement and any applicable Statement of Work, and as reasonably requested from time to time by Terra Dotta as necessary for Terra Dotta to perform its obligations under this Agreement. Terra Dotta is not responsible or liable for any delays or failures to perform based on Client's failure to provide any of the foregoing items.

(e) Client understands that successful use of the Service is dependent on Client's use of proper procedures and systems. Client shall be solely responsible for all decisions made using the Service, and acknowledges and agrees that the Service is strictly a tool to be used in conjunction with good and reasonable business judgment by competent personnel.

### 5. Term; Termination.

(a) This Agreement is effective beginning on the Effective Date and, unless sooner terminated as herein provided, will continue until terminated as set forth herein. Each Commercial Terms Exhibit will specify an initial term (the "**Initial Term**") of the subscribed Service. On or about six (6) months prior to the end of the Initial Term and any Renewal Term, Terra Dotta and Client shall enter into good faith negotiations with respect to any renewal term of the Commercial Terms Exhibit to establish the term and fees for such renewal term (the "**Renewal Term**"). A Commercial Terms Exhibit will not renew unless specifically agreed in writing by the parties.

(b) Either party may terminate this Agreement or a Commercial Terms Exhibit if the other party materially breaches this Agreement or such Commercial Terms Exhibit and such breach is not cured within thirty (30) days after written notice.

(c) Either party may terminate this Agreement if: (i) the other party ceases to carry on business; (ii) the other party is insolvent or is otherwise generally not paying its debts as they become due; or (iii) the other party is the subject of any petition under any bankruptcy or other law for the protection of debtors, except an involuntary petition that is dismissed within 60 days after filing.

(d) For the avoidance of doubt, neither party may terminate a Commercial Terms Exhibit or this Agreement for convenience; provided that if all Commercial Terms Exhibits under this Agreement have expired or been terminated, then either party may terminate this Agreement upon written notice to the other party. If Client attempts to terminate a Commercial Terms Exhibit for convenience, or if Terra Dotta terminates a Commercial Terms Exhibit due to Client's material breach, then all fees that would have come due under the current term of such Commercial Terms Exhibit shall become due and payable to Terra Dotta upon receipt of an invoice from Terra Dotta. The parties acknowledge that Terra Dotta's actual damages arising from such termination would be difficult to determine with accuracy and the parties agree that the payment obligation in the prior sentence is reasonable due to Terra Dotta's potential losses.

(e) Nothing in this Section will limit Terra Dotta's rights under the Terms of Use to terminate, suspend or block any individual Authorized User's use of all or part of the Service if Terra Dotta believes in good faith that such Authorized User has breached the Terms of Use.

(f) Sections 4(b), 6(a), 7(b), 8, 9, 10, 11(a), 12, and 13 of this Agreement shall survive termination or expiration of this Agreement. Termination of this Agreement will not affect any accrued rights or liabilities of either party.

(g) Within 30 days following termination of a Commercial Terms Exhibit, Terra Dotta will permit Client to export Client Data using the export capabilities of the Software or will provide Professional Services at Terra Dotta's then-current rates to transition data to Client, as indicated by Client at the time of termination. On or about thirty days after termination, Terra Dotta will destroy Client Data in a manner consistent with industry best practice techniques.

## 6. Fees.

(a) Client shall pay Terra Dotta the amounts set forth in any Exhibit and in any Statement of Work, in accordance with the terms set forth herein. Unless otherwise set forth in an Exhibit or a Statement of Work, Service subscription fees are payable in advance and all invoices will be due within thirty (30) days after invoice date. Late payments will be subject to interest at the rate of twelve percent annually, or the maximum amount allowed by applicable law if lower, calculated from the date when payment becomes overdue until payment is made. If a payment becomes thirty (30) days or more overdue, and has not been reasonably disputed by Client, Terra Dotta reserves the right to suspend Client's access to all or any part of the Service without liability to Terra Dotta, until payment is made in full. All payments shall be made in United States dollars and are non-refundable. Client agrees to reimburse Terra Dotta for reasonable out-of-pocket expenses pre-approved in writing by Client.

(b) If Client claims tax-exempt status for any purpose in connection with this Agreement, Client represents and warrants that it is a tax-exempt entity and will provide Terra Dotta upon request with a correct copy of Client's tax-exempt certification. Otherwise, Client agrees to pay all sales, use, excise, VAT, and other taxes based on this Agreement, excluding taxes based on Terra Dotta's net income.

## 7. Intellectual Property.

(a) Client agrees that Terra Dotta and its third party licensors own all right, title and interest, including copyright, patent, trade secret, and all other intellectual property rights, in the Service, the Software and the Site, including but not limited to structure, organization, design, algorithms, templates, data models, flow charts, logic flow, screen displays, and report formats associated therewith. Terra Dotta reserves all rights to the Service and Software not specifically granted herein. As between Client and Terra Dotta, Client shall retain ownership of Client Data.

(b) Client will not: (i) reverse engineer, decompile or disassemble the Software, and will not otherwise attempt to reconstruct or discover the source code or underlying algorithms for the Software; (ii) provide, lease, lend, rent, sell or use for timesharing, service bureau or hosting purposes or otherwise use or allow others to use the Service or Software for the benefit of third parties; or (iii) copy, modify, translate, distribute, disclose, sublicense, create derivative works from, transfer, display, or unbundle any of the Software or Service.

(c) Client hereby grants to Terra Dotta, during the term hereof, an irrevocable, royalty-free right and license to use for the purposes specified in this Agreement all Client Data and other materials, software, and data provided by Client to Terra Dotta in connection with this Agreement.

(d) Terra Dotta, at its expense, shall defend or at its option settle any third-party action, suit or proceeding brought against Client which alleges that the Service infringes any third party copyright or patent in force in the United States, or misappropriates a third party trade secret enforceable in the United States, and shall pay damages awarded against Client and any settlement amount agreed by Terra Dotta, provided that (i) Client notifies Terra Dotta promptly in writing of the claim, (ii) Terra Dotta has sole control of the defense and all related settlement negotiations, and (iii) Client provides Terra Dotta with all commercially reasonable assistance, information and authority to perform the above at Terra Dotta's expense. The foregoing indemnity shall not apply if the alleged infringement is attributable to: (i) the combination of the Service with any products not provided by Terra Dotta if the alleged infringement would not exist but for such combination, or (ii) if the Service is modified or altered by any person or entity other than Terra Dotta, or (iii) if the Service is used outside the scope of this Agreement, or (iv) written specifications or requirements provided by Client to Terra Dotta. If an injunction or order is obtained against the use of the Service due to infringement allegations, or if the Service is likely to become the subject of such an injunction or order, Terra Dotta has the right at its sole option and expense to: (i) modify or replace the Service to be non-infringing

while preserving substantially similar functionality of the original Service; or (ii) obtain the right to continue providing the Service; or (iii) if (i) and (ii) are commercially impracticable, terminate the infringing Service and refund to Client the fees paid to Terra Dotta for the Service in advance, pro-rated to reflect prior usage of the Service. THIS SECTION STATES TERRA DOTTA'S SOLE LIABILITY TO LICENSEE WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS.

(e) Except to the extent Client is legally prohibited from indemnifying Terra Dotta, Client, at its expense, shall defend or at its option settle any third-party action, suit or proceeding brought against Terra Dotta which alleges that any Client Data infringes any third party copyright or patent in force in the United States, or misappropriates a third party trade secret enforceable in the United States, or otherwise violates any third party rights, and shall pay damages awarded against Terra Dotta and any settlement amount agreed by Client, provided that (i) Terra Dotta notifies Client promptly in writing of the claim, (ii) Client has sole control of the defense and all related settlement negotiations, and (iii) Terra Dotta provides Client with all commercially reasonable assistance, information and authority to perform the above at Client's expense.

## 8. Confidentiality.

(a) "Confidential Information" means any information or data (including without limitation any formula, pattern, compilation, program, device, method, technique, or process) that is identified by either party in writing as confidential or is of such a nature that a reasonable person would understand such data and/or information to be confidential that is disclosed by one party (a disclosing party) to the other party (a receiving party) pursuant to this Agreement, so long as such information is subject to reasonable efforts by the disclosing party to preserve its confidentiality. Confidential Information of Terra Dotta includes, but is not limited to, the terms of this Agreement; the Software, as well as the structure, organization, design, algorithms, methods, templates, data models, data structures, flow charts, logic flow, and screen displays associated with the Software; the Documentation; and Terra Dotta's pricing, sales and training materials and procedures. Confidential Information of Client includes student education records as protected by the Family Educational Rights and Privacy Act ("**FERPA**"), 20 U.S.C. § 1232g, and defined in 20 U.S.C. § 1232g(a)(4)(A)(i). Confidential Information does not include information that: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; (c) was previously known by the receiving party as shown by its written records; or (d) is otherwise required to be disclosed by law.

(b) A receiving party agrees, except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, or allow a third party access to the Confidential Information, except for third-party contractors and service providers working for the receiving party under terms of confidentiality substantially the same as the confidentiality terms herein. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by law or court order; in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.

(c) Notwithstanding anything to the contrary herein, Client agrees that Terra Dotta may: (a) derive and compile from the provision of the Service certain de-identified, aggregate and/or analytical data, which shall not contain any Client-specific or any individually identifying information, and (b) use this data for Terra Dotta's own purposes and without restriction, including, but not limited to, using the data in conjunction with data from other sources to improve Terra Dotta's products and services and create new data models and products.

(d) Each party acknowledges and agrees that any violation of this Section or the intellectual property rights of Terra Dotta may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to seek preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and in no way in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.

(e) Upon the termination of this Agreement, the receiving party will return to the disclosing party all the Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party. Notwithstanding the foregoing, the parties shall not be obligated to erase Confidential Information that is contained in an archived computer system backup that was made in accordance with a party's security and/or disaster recovery procedures; provided, however, that any such Confidential Information contained in such archived computer system backup shall be subject to the terms and conditions of this Agreement.

## 9. Data Protection and Security.

(a) In the course of providing the Service, Terra Dotta may have access to student education records as defined under FERPA. To the extent that FERPA applies to the Service, the parties agree that, for the purposes of this Agreement, Terra Dotta is a "school official" under FERPA. Terra Dotta agrees that it shall use student education records solely as allowed by this Agreement. Terra Dotta also may process data covered by the European Union General Data Protection Regulation 2016/679 ("GDPR"). Each party agrees that it will adhere to all laws and regulations relating to the privacy and protection of individually identifiable data, including but not limited to FERPA and GDPR.

(b) Terra Dotta will use commercially reasonable administrative, technical and physical security measures to maintain the confidentiality of Client Data. Access to Client Data by Terra Dotta will be limited to Terra Dotta personnel with a need to know.

(c) Terra Dotta will maintain an information security program, including security policies, standards and procedures (collectively, "**Information Security Policy**"). All Terra Dotta personnel will undergo training on the Terra Dotta Information Security Policy. Terra Dotta will perform an independent, external security evaluation, audit, or review on a regular basis (but no less than annually).

(d) In the event Terra Dotta becomes aware that an unauthorized person has accessed Client Data or a security breach has occurred affecting Client Data held in the Service, Terra Dotta will promptly (within one business day) notify Client of the breach and take steps to limit and mitigate such breach to the extent possible.

(e) Unless otherwise agreed in writing by Terra Dotta, Terra Dotta is not obligated to provide access to data held in the Service regarding Authorized Users except through tools and features generally made available through the Service.

#### 10. Warranties and Disclaimers.

(a) Each party warrants that it has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling its obligations hereunder.

(b) Terra Dotta warrants that the Service will substantially conform to the Documentation provided in connection with the Service. Client's sole and exclusive remedy for breach of this warranty is for Terra Dotta to use commercially reasonable efforts to cause the Service to conform in accordance with the support and maintenance terms of this Agreement.

(c) Client represents and warrants that all Client Data provided to Terra Dotta in connection with Client's use of the Site and the Service: (i) is owned by Client, or Client has the full right to provide Client Data to Terra Dotta; (ii) does not infringe or misappropriate any copyright, trademark, trade secret or other intellectual property right; (iii) does not violate any person's right of privacy or publicity; and (iv) does not contain any unlawful, obscene, defamatory or libelous material. Client further represents and warrants that its use of Client Data on the Site or in connection with the Service is not in breach of any confidentiality obligation that Client has to any other person or entity.

(d) Terra Dotta does not warrant that the Service will operate uninterrupted or error-free. To the extent that data is being transmitted over a cell phone network, the Internet or Client's network, Client acknowledges that Terra Dotta has no control over the functioning of the Internet, or any phone, cellular or other non-Terra Dotta network and Terra Dotta makes no representations or warranties of any kind regarding the performance of any such networks. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TERRA DOTTA AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE; WARRANTIES OF NON-INFRINGEMENT; OR ANY WARRANTIES ARISING AS A RESULT OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.**

(e) Terra Dotta may from time to time provide as part of the Service interfaces to third party software, systems, databases and services (collectively, "**Third-Party Systems**"). Terra Dotta reserves the right to charge additional fees for providing and supporting interfaces. Unless otherwise agreed in writing by Terra Dotta, Client is solely responsible for obtaining any permissions and consents from third-party vendors necessary for Terra Dotta to deliver any interfaces to Third-Party Systems that have been acquired by Client. Client acknowledges that Terra Dotta has no control over Third-Party Systems and accordingly Terra Dotta makes no representations or warranties of any kind regarding its interfaces to Third-Party Systems.

#### 11. Liability; Insurance.

(a) Client agrees that the aggregate liability of Terra Dotta and its suppliers relating to this Agreement and the Service shall be limited to the amount of fees actually received by Terra Dotta from Client under this Agreement during the one-year period immediately preceding the event which gave rise to the claims. Except in connection with a claim of infringement covered by Section 7(d) or 7(e) above, in no event shall either party be liable for any special, incidental, indirect, cover, consequential, exemplary or punitive damages; any damages based on injury to person or property or death; or any lost sales, profits or data, even if such party is told that any of such damages may occur. Any action by either party must be brought within one (1) year after the cause of action arose.

(b) Terra Dotta, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, the following insurance coverage issued by insurance companies with an A.M. Best rating of "A" or better or the functional equivalent: (i) A policy of comprehensive general liability insurance to afford protection to the limit of US\$1,000,000 with respect to bodily injury or death and US\$2,000,000 of general aggregate and products liability; (ii) a policy of Technology Errors & Omissions liability insurance which includes cyber liability coverage with a minimum limit of US\$1,000,000; (iii) If an automobile is to be used by Terra Dotta in performing the services for Client, a policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement with such policy to afford protection to the limit of US\$1,000,000 with respect to bodily injury, death or property damage for any one accident; and (iv) A policy of Worker's Compensation insurance covering all officers, employees or agents of Terra Dotta who are in any way engaged in or connected with the performance of services for Client and Employers Liability insurance in the amount of US\$500,000.

#### 12. Assignment.

Neither Client nor Terra Dotta may assign or otherwise transfer this Agreement without the prior written consent of the other party, except that such consent shall not be necessary in connection with the sale of all or substantially all of such party's business or portion of such party's business to which this Agreement relates, so long as such acquirer is not a competitor of the other party. Any permitted assignee must agree in writing to the terms of this Agreement.

#### 13. Other Provisions.

(a) The parties are independent contractors, and nothing in this Agreement shall be construed as creating a joint venture, partnership, agent or employment relationship between Terra Dotta and Client.

(b) Any notice or other communication required or permitted in this Agreement shall be in writing and delivered to the addresses listed on the first page of this Agreement either: (i) by personal delivery; (ii) by certified mail; or (iii) by recognized express courier, and shall be effective upon receipt.

(c) This Agreement, including any Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, conversations, discussions and agreements between the parties concerning the subject matter hereof. Client specifically acknowledges and agrees that, in entering into this Agreement, Client has not relied on any information or promises that are not specifically set forth in this Agreement. Terra Dotta will have no obligation to provide any services, software, networking, or hardware related to any item on an Exhibit except as specifically set forth in this Agreement. This Agreement may not be modified or waived except in a written document, signed by both parties. Any additional or conflicting terms on any purchase order for any products or services covered by this Agreement shall be void and without effect unless agreed to in a separate writing signed by both parties.

(d) Applicable Law and Arbitration.

(i) This Agreement shall be governed by and interpreted in accordance with the laws of the state of Client's principal place of business, if Client is located in the United States. If Client is located outside of the United States, then the laws of the state of North Carolina shall govern, without giving effect to its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sales of Goods does not apply this Agreement.

(ii) Each party shall attempt in good faith to resolve any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement ("**Dispute**") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management within each of the parties' organizations than the parties' normal project managers. Each party shall provide the other with all information and documentation relied upon by the party to substantiate its position with respect to the Dispute.

(iii) All Disputes that cannot be resolved through good-faith negotiation will be settled by binding arbitration. Judgment on any award rendered may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, either party may pursue injunctive relief to protect its intellectual property rights and confidential information. The arbitration hearing will be conducted in accordance with the then-current rules of the American Arbitration Association. The site of the Arbitration will be Raleigh, NC, USA. The arbitration panel shall consist of one arbitrator.

(e) Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond its reasonable control, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, or failure of telecommunication or internet service providers.

(f) Neither the Service, Software, nor any direct product thereof or technical data related thereto, shall be exported or re-exported by Client in violation of any export or import regulations of the United States or any other applicable jurisdiction, including but not limited to the United States Export Administration Regulations and end-user, end-use, and country destination restrictions issued by the United States and other governments.

(g) There are no intended third-party beneficiaries of this Agreement, and nothing in this Agreement may be relied upon by, or shall benefit, any party other than Terra Dotta and Client.

(h) If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, then the invalidity or unenforceability shall not affect the other provisions of the Agreement and all provisions not affected shall remain in full force and effect. Both parties will attempt to substitute with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

(i) Headings to clauses are for ease of reference only and will not affect the interpretation of this Agreement. This Agreement may be executed in any number of counterparts and by the parties upon different counterparts, each of which shall be deemed to be an original, but which together shall constitute one and the same agreement.

(j) An Equal Opportunity Employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or protected veteran status and will not be discriminated against on the basis of disability.

**TERRA DOTTA, LLC**

By:

Name:

Title:

Date: 6/20/2019

Date: 6/12/2019



## GDPR DATA PROCESSING ADDENDUM

This Data Processing Addendum (this "**Addendum**") is by and between Terra Dotta, LLC ("**Terra Dotta**") and **The University of North Texas** ("**Client**"). This Addendum applies if Client has determined that it is a data controller subject to GDPR (defined below) and contains agreed terms relating to privacy and security. This Addendum serves as an amendment to the Software as a Service Agreement (the "**Agreement**") entered into by the parties. Capitalized terms used in this Addendum but not defined have the meaning set forth in the Agreement or under GDPR, as applicable.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

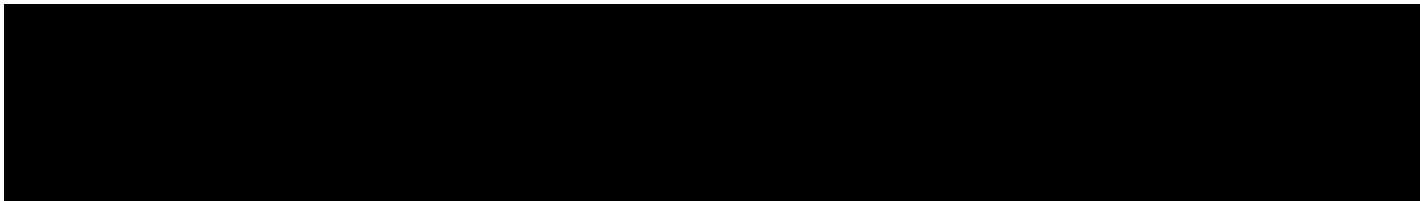
1. Definitions. As used herein the following terms shall have the following definitions:
  - a. "**controller**", "**processor**", "**data subject**", "**personal data**" and "**processing**" (and "**process**") shall have the meanings given in Privacy Laws, as applicable to the processing of Client Personal Data under the Agreement.
  - b. "**Client Personal Data**" means personal data supplied by Client or its users to Terra Dotta in connection with the Terra Dotta Services provided under the Agreement.
  - c. "**GDPR**" means the General Data Protection Regulation, Regulation (EU) 2016/679.
  - d. "**Terra Dotta Software**" means Terra Dotta's standard software solution that assists institutions in managing study abroad and international education programs and international travel by its students, faculty and personnel.
  - e. "**Privacy Laws**" means all applicable U.S. and international laws that regulate the use, disclosure and processing of personal data. Privacy Laws include as applicable GDPR and other applicable laws that specify privacy, data protection, security or security breach notification obligations that apply to personal data.
  - f. "**Terra Dotta Services**" means the Software-as-a-Service, hosting, technical support and other services provided by Terra Dotta to Client, solely to the extent agreed by the parties pursuant to the Agreement.
2. Roles of the Parties under GDPR. The parties acknowledge and agree that Client is the controller and Terra Dotta is a processor with regard to the processing by Terra Dotta of Client Personal Data under the Agreement. The subject matter, nature and purpose of Terra Dotta's processing are limited to providing the Terra Dotta Services under the Agreement. The duration of the processing is the term of the Agreement. Data subjects include authorized users of Client as defined in the Agreement.
3. Instructions for Processing. Terra Dotta shall process Client Personal Data only to provide Terra Dotta Services in accordance with the Agreement and this Addendum, which the parties agree serve as Client's documented instructions. Client may provide additional instructions to Terra Dotta to process Client Personal Data, provided that Terra Dotta shall be obligated to perform such additional instructions only if they are consistent with the terms and scope of the Agreement and this Addendum. Terra Dotta will inform Client if Terra Dotta believes that any instructions provided by Client violate any Privacy Laws.
4. Terra Dotta Personnel. Terra Dotta shall require its personnel who have access to Client Personal Data to: (a) receive appropriate training on their responsibilities regarding the handling and safeguarding of Client Personal Data, and (b) agree to comply with confidentiality obligations that survive the termination of such personnel's employment.
5. Security Measures. Client and Terra Dotta each shall maintain (taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons), appropriate technical and organizational measures to protect against loss, alteration, unauthorized disclosure of, or access to Client Personal Data.
6. Compliance with Privacy Laws. Client and Terra Dotta each agree to comply with all Privacy Laws. As between the parties, Client shall be solely responsible for the accuracy, quality, and legality of Client Personal Data and the means by which Client obtained Client Personal Data.
7. Privacy Shield. Terra Dotta is self-certified under the EU-U.S. Privacy Shield Framework maintained by the U.S. Department of Commerce ("Privacy Shield") and complies with Privacy Shield requirements for handling, collecting and transferring Personal Data from the EEA and Switzerland to the United States in connection with the Terra Dotta Services. Terra Dotta will remain certified for the term of the Agreement so long as the Privacy Shield is recognized as a valid transfer mechanism under GDPR.

- 8. Rights of Data Subjects. To the extent permitted by law, Terra Dotta will tell data subjects who make requests to Terra Dotta exercising their data subject rights (such as deletion, rectification, and data portability requests) with respect to Client Personal Data to contact Client directly regarding such request. Client shall be solely responsible for responding to such requests from data subjects. If the Terra Dotta Software does not provide Client the ability to respond to such requests, then, upon Client's request, Terra Dotta will provide reasonable assistance to Client to respond to such requests. Depending on the nature of such assistance, Terra Dotta reserves the right to charge Client for assistance with such requests.
- 9. Security Incidents. Each party shall, to the extent permitted by law, notify the other party without undue delay after becoming aware of a personal data breach involving Client Personal Data ("**Security Incident**"). Each party shall provide reasonably requested assistance to the other party in dealing with any Security Incident, taking into account the nature of processing and the information available to such party. Neither party shall make any public announcement about a Security Incident without the prior written consent of the other party, unless required by applicable law.
- 10. Deletion of Client Personal Data. Upon termination or expiration of the Agreement, Terra Dotta will delete Client Personal Data in its possession, unless otherwise required by applicable law.
- 11. Government Access Requests. Unless prohibited by applicable law or a legally-binding request of law enforcement, Terra Dotta shall promptly notify Client of any request by a government agency or law enforcement authority for access to or copy of Client Personal Data.
- 12. Audits. Subject to reasonable notice, and at Client's expense (including fees and expenses to compensate Terra Dotta for its time and out of pocket costs involved in responding to any audit request), Terra Dotta shall provide Client with reasonably requested information regarding Terra Dotta's security program and systems and procedures that are applicable to the Terra Dotta Services, as necessary to demonstrate Terra Dotta's compliance with Privacy Laws, and as reasonably necessary to allow for audits of the same. Audits will occur at most annually or following notice of a Security Incident.
- 13. Subprocessors. Client grants a general authorization to Terra Dotta to appoint subprocessors to support the performance of the Terra Dotta Services, including data center providers. Upon request, Terra Dotta will provide Client with a list of such subprocessors. If Client has an objection to any such subprocessor, Terra Dotta will work with Client to address any such concerns. Terra Dotta will ensure that any subprocessor it engages on its behalf in connection with this Addendum agrees in a written contract to subprocessor terms substantially as protective of Client Personal Data as those imposed on Terra Dotta in this Addendum (the "**Subprocessor Terms**"). Terra Dotta shall be liable to Client for any breach by a subprocessor of any of the Subprocessor Terms.
- 14. Entire Addendum; Conflict: This Addendum supersedes and replaces all prior and contemporaneous statements, understandings, and communications, oral and written, with regard to the subject matter of this Addendum. If there is any conflict between this Addendum and the Agreement, the terms of this Addendum shall control. Except as expressly set forth in this Addendum, the terms of the Agreement shall remain in place. For the avoidance of doubt, the parties intend that the limitations on liability clauses in the Agreement shall apply to this Addendum.

Each person signing below for a party represents that he or she is duly authorized to execute this Addendum on behalf of such party.

**TERRA DOTTA, LLC**

**THE UNIVERSITY OF NORTH TEXAS**



Date: 6/20/2019

Date: 6/12/2019



Addendum attached hereto and incorporated herein for all purposes.



**COMMERCIAL TERMS – EXHIBIT 1 (Study Abroad System)**

This **Exhibit 1** is made and entered into by and between Terra Dotta, LLC (“**Terra Dotta**”) and **The University of North Texas** (“**Client**”) and incorporates the terms of the Software as a Service Agreement between the parties (the “**Agreement**”) dated 6/12/2019.

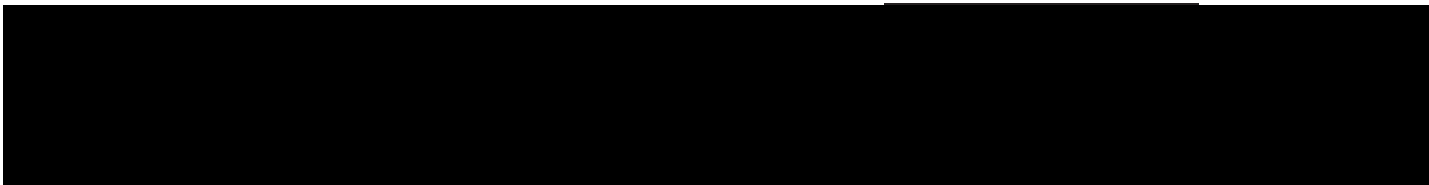
1. Scope. The following Service will be provided as part of this Exhibit:
  - **Terra Dotta Software as a Service for Study Abroad** – The Service is provided for use by Client to manage its study abroad programs and enrollments up to the maximum number of applicants set forth in the Fees section below.
  - **Implementation Services** – Terra Dotta will work with Client’s technical staff on the initial integration of the Service with Client’s campus login system, student information system and staff/faculty directory. Terra Dotta will assist Client’s functional office staff in the creation of content and processes following Terra Dotta’s standard implementation procedures and provide Client’s primary administrators with training on use of the Service during the implementation.
  - **Storage** – Storage of 50 GB is included with the Service. Additional storage above this amount will be charged at \$1,200/year for each additional 50 GB increment.
  
2. Term. The Initial Term of this Exhibit is five (5) years and five (5) months.
  
3. Fees. Client agrees to pay Terra Dotta the fees set forth in the table below. All annual recurring fees are subject to change; provided that Terra Dotta will not increase the fees during any annual period by more than four percent (4%) from the previous year. Additional fees will apply if Client exceeds its subscribed level of usage as set forth below.

Description	Price
Study Abroad Annual Service Fee – Up to 4,500 Applicants/Year	\$16,560

\*5 months proration of Annual Service Fee less 5 months prorated credit for the unused portion of Maintenance Fee (\$6,900 - \$4,637.50= \$2,262.50). Annual Service Fee shall commence January 1<sup>st</sup>, 2020.

TERRA DOTTA, LLC

THE UNIVERSITY OF NORTH TEXAS



Date: 6/20/2019

Date: 6/12/2019



TERRADOTTA

## **Statement of Work**

# **The University of North Texas Terra Dotta Software Hosting Migration**

April 5, 2019

Prepared by:



# Statement of Work

## Introduction

This Statement of Work ("SOW") describes certain consulting services that Terra Dotta, LLC ("Terra Dotta") will provide to The University of North Texas ("Client").

This Statement of Work ("SOW") and any Exhibits or Attachments hereto shall be governed by the terms of the Software as a Service ("Agreement") between Client and Terra Dotta with an Effective Date of 6/12/2019.

## Project Scope

Client has requested that Terra Dotta provide hosting services for Client's Terra Dotta software and database, and Professional Services to perform a migration from Client's on-campus system to Terra Dotta shared-hosting services. Terra Dotta shall:

- Set up a hosting environment consisting of a shared IIS-ColdFusion application server, MS-SQL database and secure file transfer.
- set up a hosting environment consisting of a shared ISS-ColdFusion application server, MS-SQL
- Convert Client's current Terra Dotta database from Oracle to MS-SQL.
- Manage the migration of the current software, database and media files to Terra Dotta's shared hosting servers.
- Set up processes, with Client's IT group, to re-integrate the student information system and student and staff logins between Client's Secure Campus Login (SCL) system and Terra Dotta's hosting servers.
- Review client layout and any existing customizations for compatibility with Terra Dotta hosting standards and make minor modifications as necessary.
- Upgrade Terra Dotta software to the latest version and maintenance release.

These efforts include time for planning discussions, execution of the tasks and testing.

These migration costs are one-time costs. Changes to data system integrations, once completed, could result in future charges. Terra Dotta will be responsible for installing future maintenance patches and major releases of ColdFusion and Terra Dotta software without charge so long as Client continues hosting services with Terra Dotta and remains current on annual maintenance.

## **Project Roles and Responsibilities**

The roles and responsibilities for Client and Terra Dotta are subject to change depending on the scope defined in this SOW or changes made through Change Management.

### **The University of North Texas**

- Appoint a Project Lead to assist in the delivery of the Project.
- Participate in developing the overall project schedule.
- Execute and ensure the complete transfer of database and user media files to Terra Dotta's data center.
- Provision services/resources for campus systems integration: user authentication (SCL), student data (SIS) and faculty/staff directory info (HR).
- Assist in analyzing and resolving issues.
- Perform testing of the system after the conversion is completed.

### **Terra Dotta**

- Develop the SOW.
- Provide overall project management.
- Participate in developing the overall project schedule and provide overall management and oversight of Terra Dotta's resources.
- Convert database from Oracle to MS SQL-Server.
- Provide instructions to Client's IT group for integration requirements and for secure file transfer of data to Terra Dotta's data center.
- Perform initial system testing.

## **Change Management:**

This SOW reflects the entire understanding between Terra Dotta and Client with regard to this project. Any modification, amendments, or changes to this SOW must be in writing and signed by both parties. It is understood and agreed upon between the Client and Terra Dotta that any change to the project may impact the scope, schedule and/or the budget of the project. Modifications may require a separate project at additional cost.

## Project Assumptions

The success of this engagement is dependent on the commitment and effort of both parties. Please review the following assumptions:

- Client Project Lead will be identified at the start of this project and will be available to provide work direction to Client staff resources during the migration, integration and testing phases of the project.
- Two days downtime will be scheduled during which Terra Dotta will be unavailable for application processing by Client's students. These days will be scheduled between Monday and Friday, excluding Terra Dotta holidays. At Client's discretion, the site can remain online on the original systems to allow for emergency information access by administrators. Data modifications made during this interim period will not be reflected in the new system when it comes online.
- The Application System Integration will utilize Terra Dotta's common methodology. While this type of integration is always customized, there is a flat fee for projects that keep within the common methodology. The use of the common methodology will be discussed and confirmed during the initial project analysis.
- Client's on-campus installation of Terra Dotta Software is at version 15.2 or later.
- Any custom actions, custom reports, payment gateway integration, custom graphics, or other customizations to the Terra Dotta software, will be reviewed by Terra Dotta's engineers. Terra Dotta will review the customizations for compatibility with Terra Dotta's current version, hosting environment, and security protocols. Terra Dotta will make minor modifications to remediate customizations at no cost. Terra Dotta will inform the client if there is a need to make major modifications to customizations to make them compatible. If the client agrees, Terra Dotta will make modifications at \$200 per hour. It is possible that some customizations cannot be made compatible.
- Client will provide:
  - Database back up file in a form defined by Terra Dotta.
  - User media files, transferred electronically or by physical media to the Terra Dotta data center for loading onto the server.
  - Configuration and connectivity assistance with the Client system for the integration of login, HR directory and student information system.
  - A valid SSL certificate.
- After completion of the project:
  - Client will be responsible for the website content and application materials and processes just as they are today.
  - Terra Dotta will be responsible for server operations, availability, backups and software updates.
  - Client and Terra Dotta will be jointly responsible for the operation of the SCL and SIS integrations.
- Primary project communication will be via Terra Dotta's Support Case System.

## **Professional Fees**

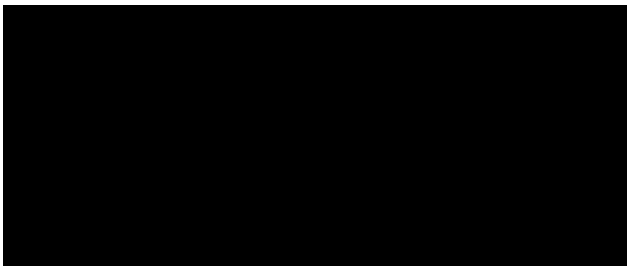
The professional fees associated with this project are \$6,000.

## **Expiration of SOW**

This Statement of Work shall become void unless it is signed by Client and returned to Terra Dotta by June 15, 2019.

## **Project Authorization**

By: **The University of North Texas**



Date: 6/12/2019

**STANDARD ADDENDUM TO AGREEMENT**

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

Eligibility to Receive Payment. By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Tax Exempt. UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNT. Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

Governing Law and Venue. This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

No Excess Obligations. In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

Travel Expenses. Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

Insurance. UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall, without further requirement, satisfy all insurance obligations of UNT under the Agreement.

Public Information. UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format.

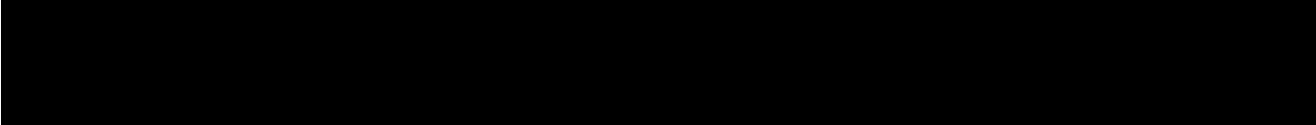
Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. Pursuant to Texas Gov't Code Section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.**

VENDOR: Terra Dotta LLC

UNIVERSITY OF NORTH TEXAS



Date: 6/20/2019

Date: 6/12/2019

## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.