



**ORDER FORM
TO SYMPPLICITY MASTER CUSTOMER AGREEMENT**

- New Product Order
 Renewal Order
 Add / Remove:
 Upgrade

Customer	<i>Institution:</i>	University of North Texas at Dallas
	<i>Division/Office/Department:</i>	Student Affairs - Disability Services
Mailing Address	7400 University Hills Blvd Founders Hall, Rm 244 Dallas, TX 75241-4600	
Order Term	September 1, 2019-August 31, 2022	
Order Term in months	36	
Customer Student FTE	<4000	
Authorized Users	Faculty, staff, employers, alumni and students of named Customer	

Ordered Products:

Product Order Description	Year 1	Year 2	Year 3
Accommodate Full Edition	\$8000	\$8000	\$8000
Total	\$8000	\$8000	\$8000

Ordered Services:

Service Order Description	Year 1
Accommodate Full Set-Up #3	\$12,000
Includes- <i>Automated Student Data, Schedule and Faculty Import via SFTP Dropsite weekly full and/or nightly delta; Shibboleth or SAML-based single sign-on; 3 Working Sessions</i>	Included
Total	

Special Terms and Notes

The Data Privacy & Security Addendum (the "DSPA") is hereby incorporated into the Agreement as Appendix A. Addendum attached hereto and incorporated herein for all purposes.

Billing Frequency: Annual Payment Terms: Net 30 days.
Reference agreement: <https://www.simplicity.com/legal/OTC7002U>

This Order Form is governed by the terms and conditions set forth in the Reference Agreement which are incorporated by reference herein, except for express terms that have been included in this Order Form which shall supersede the Reference Agreement. The terms and content of any bid documentation or responses, or any terms referenced within a purchase order document, shall not be contractually binding unless explicitly referenced in an order form, SOW or the Reference Agreement signed by the parties. In the event of a conflict between the terms of the Reference Agreement and this Order Form, the terms and conditions of this Order Form will govern, including, if applicable, license and renewal terms.

Simplicity Corporation, 3003 Washington Blvd, Suite 900, Arlington VA 22201

PC
Order ID: 1791351



The initial term is shown under Order Term above. After the initial term, the Ordered Products will renew for successive 12 month terms at the then-current price unless either party provides written notice of non-renewal at least 90 days prior to the expiry of the applicable term.

Payment Methods: Please send PO's and remittance advice to: accounts@symplicity.com Amounts shown are in US dollars. Symplicity's accepted methods of payment are checks, ACH, and wire transactions. Symplicity's preferred method of payment is ACH, including Paymode and Viewpost. The licensee is responsible for all bank charges which are incurred in the wiring or other transmissions of funds. To ensure payment is applied appropriately and timely, all payments must reference invoice number and licensee name. This Order form pricing supersedes any previously provided pricing or discounts.

[Signature Page Follows]



The foregoing Order Form as governed by the Reference Agreement is hereby executed as of the Order Date indicated below.

	Customer Billing Contact	<i>Please enter any corrections</i>
Contact Name	[REDACTED]	
Street Address	7400 University Hills Blvd Founders Hall, Rm 244	
City, State/Province Country, Zip Code	Dallas TX 75241-4600	
Phone Number	[REDACTED]	
Email (required)	[REDACTED]	

Customer is tax-exempt? Yes If yes, Sales Tax Exemption Certificate must be provided to [REDACTED] or order will be subject to applicable sales taxes.

Customer: University of North Texas at Dallas

Symplicity Corporation

Signature

Name

Title

[REDACTED]

Signature:

Name:

Title:

[REDACTED]

Order Date: August 29, 2019

Appendix A
Data Privacy and Security Addendum (the “DPSA”)

1. General.

1.1. Definitions.

“Data Protection Laws” means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”) and its implementing regulations set forth in 34 C.F.R Part 99.

“Customer Data” shall mean the electronic information that Customer or its end-users input or upload into the Licensed Technology/Software within the scope of the applicable license or services agreement between Customer and Symplicity and shall include PII of Licensee’s users.

“PII” means any personally identifiable information of an individual stored in the Licensed Software/Technology.

1.2. Confidentiality. Other than processing of Customer Data for the purposes of the Agreement or hereunder, Symplicity undertakes not to disclose Customer Data to any party other than to Symplicity’s authorized employees, contractors or service providers or as authorized by Licensee or the data subject or in accordance with applicable law. Symplicity confirms that it is aware of the applicable provisions and regulations under the Data Protection Laws. Symplicity shall be responsible for the compliance with this DPSA of its employees, contractors and authorized service providers relating to the products and services delivered under the Agreement.

1.3. Protection of Personally Identifiable Information from Education Records. Except as otherwise expressly permitted or required by this Agreement, as required by applicable law, Symplicity agrees to hold in confidence any PII from education records it receives from Licensee, any of Licensee’s users (or any third party acting on either’s behalf) during, and as a consequence of, the transactions contemplated under this Agreement, except with the consent of Licensee or Licensee’s users as the case may be. Symplicity additionally agrees to abide by the limitations on re-disclosure under FERPA.

1.4. Deletion of data. Upon expiration or earlier termination of the license for the applicable Licensed Software/Technology, or such earlier time as Licensee requests, Symplicity agrees upon request, to securely destroy or render unreadable or undecipherable, the relevant Customer Data in Symplicity’s possession, custody or control. Symplicity shall ensure from an organizational perspective that Customer Data can be deleted within a reasonable time frame consistent with Licensee’s request or deletion requirements established in the Agreement, except that Symplicity shall not be obliged to delete Customer Data from archival and back-up files except as in line with Symplicity’s company data deletion schedule. During the term of each license, Licensee may utilize available reporting and data administration tools to export data from the Licensed Software/Technology at no additional charge or request data extraction services from Symplicity at applicable rates.

2. Data security measures. Symplicity shall maintain appropriate security incident management policies and procedures designed to secure Customer Data including PII from unauthorized access or disclosure. Such policies and procedures are as specified in the Symplicity IT/Information Security Policy, a current version of which has been provided to Customer, and may be updated from time-to-time by Symplicity to address technological developments and other changes in security practices.

3. Miscellaneous. Unless specifically stipulated to the contrary by the Parties, the duration of the commissioned data processing specified by this DPSA shall be coterminous with the license term for each Licensed Software/Technology under the Agreement. In the event of a conflict between this DPSA and any other provision of the Agreement between Licensee and Symplicity, this DPSA will prevail; provided that if Licensee and Symplicity have agreed in an Order Form to any terms that are different from this DPSA, the terms in such Order Form will prevail.

4. Audit.

4.1 Upon request, Symplicity will provide Licensee an overview of Symplicity’s data processing operations, to include the following information: owners, managing boards, managing directors or other lawfully or constitutionally appointed managers and the persons placed in charge of the Customer Data processing; Symplicity’s address; purposes of collecting, processing or using the Customer Data; a description of the groups of data subjects and the Customer Data or categories of Customer Data; recipients or categories of recipients to whom the Customer Data may be

transferred; standard periods for the retention of Customer Data; any planned data transfer to third countries; and a general description enabling a preliminary assessment as to whether the technical and organizational measures to guarantee the safety of processing are adequate. The Parties agree and acknowledge that for the purposes of this Section 4 it shall be sufficient that Symplicity present all documentation, including a certified statement on the compliance with this DPSA, in such format as reasonably required by Licensee or any independent auditor appointed by Licensee at Licensee's expense.

4.2 Licensee have the right, at its own expense, to audit Symplicity's compliance with the statutory regulations on data protection and the stipulations entered into between the Parties (including the technical and organizational measures), by requesting information about and inspecting storage of the Customer Data, and implemented policies and security incident reports, subject to reasonable prior notice of at least 14 days in advance, reasonable and appropriate confidentiality undertakings by Licensee and its advisers and, to the extent reasonably possible, without interfering with Symplicity's regular business operations.

4.3 Any Symplicity information or documents provided to or accessed by Licensee under this Section 4 shall be deemed to be Confidential Information of Symplicity under the Agreement unless determined to be within an exception to Confidential Information as defined under the Agreement. Any third party assisting Licensee with an audit may not be a competitor to Symplicity nor be compensated by Licensee on a contingency fee basis.

5. Notification duties.

5.1 In the event Symplicity has established a reasonable, good faith belief that an unauthorized third party has accessed or disclosed PII, Symplicity will notify Licensee without undue delay and in any event within the required timeframe under any applicable law. Symplicity will provide Licensee with reasonable cooperation and assistance in relation to Licensee's investigation of the incident. If such incident triggers any third-party notice requirements under the Data Protection Laws, Licensee agree that unless otherwise required by the Data Protection Laws, as the owner of the Customer Data, Licensee will be responsible for the content and delivery of any such notice and compliance with such Data Protection Laws.

5.2 In the event that Symplicity's assistance is required or requested by Licensee under this DPSA or the Data Protection Laws relating to a breach or other incident involving PII that was caused by Licensee's users or the failure by Licensee or its users to keep their login credentials confidential, then Licensee shall be responsible for the costs arising from Symplicity's provision of such assistance.

6. Third Party Requests. Symplicity shall notify Licensee about any legally binding request for disclosure of the Customer Data by a law enforcement authority or other organization or body, unless prohibited by law; and any request received directly by Symplicity from a data subject.

7. European Specific Provisions for end users covered by GDPR.

7.1 GDPR. With effect from 25 May 2018, Symplicity will process Customer Data in accordance with the GDPR requirements directly applicable to Symplicity's Licensed Software/Technology.

7.2 Data Protection Impact Assessment. With effect from 25 May 2018, upon Customer's request, Symplicity shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Licensed Software/Technology, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Symplicity.

7.3 Transfer Mechanisms. Symplicity Corporation and its U.S. Affiliates self-certify to and comply with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, as administered by the US Department of Commerce, and Symplicity shall ensure that such entities maintain their self-certifications to and compliance with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks with respect to the Processing of Personal Data that is transferred from the European Economic Area and/or Switzerland to the United States for the Licensed Software/Technology or provide an alternate transfer mechanism permitted under the applicable Data Protection Laws and Regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom

STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System (“UNTS”) and the University of North Texas at Dallas (“UNTD”) 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 UNTD; 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. 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. UNTD is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

Breach of Contract Claims Against UNTD. 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 UNTD 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 Dallas County, Texas, and venue for any suit filed against UNTD 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, UNTD’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, UNTD shall issue written notice to Vendor that UNTD 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.

Delivery. Delivery shall be FOB Destination.

Insurance. UNTD, 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 UNTD shall, without further requirement, satisfy all insurance obligations of UNTD under the Agreement.

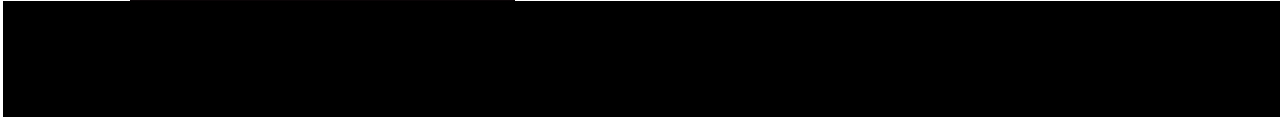
Public Information. UNTD shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTD in an electronic format.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNTD is required by Texas Gov’t Code Section 2261.253 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. If the Agreement is subject 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. UNTD 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 UNTD 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 UNTD, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

Vendor: UNIVERSITY OF NORTH TEXAS AT DALLAS



Date: 8/29/2019

Date:

Symplicity Master Customer Agreement

This Symplicity Master Customer Agreement is entered into and effective as of the Effective Date by and between Symplicity Corporation, located at 3003 Washington Blvd, Suite 900, Arlington, VA 22201 (“Symplcity”) and the Customer detailed in the Order Form (the “Licensee”), each a ‘Party’ and together the ‘Parties’.

1. License; Ownership.

1.1. License. Subject to the terms and conditions hereof, Symplicity hereby grants to Licensee, and Licensee hereby accepts, for the term specified in each applicable Order Form (“Term”), a non-exclusive, non-transferable license for Licensee’s own internal business purposes to use the Symplicity software, software-as-a service or other products referenced in Order Form and licensed APIs (the “Licensed Software/Technology”), web hosting services, support services provided by Symplicity and deliverables from additional consulting and services that Symplicity may perform under a PSRA (“Professional Services”) (collectively the “Program”) solely for the internal business purposes of the named Customer in accordance with the Program documentation made available by Symplicity (“Documentation”) to Authorized Users of Customer.

1.2. Restrictions. Licensee shall not modify, improve, enhance, adapt, translate, reverse engineer, disassemble, re-engineer, or decompile the Program or Documentation for any purpose or in any manner whatever or alter, remove or obscure any patent, trademark or copyright notice in the Program or Documentation. Licensee may make only so many reproductions of the Documentation as is necessary to exercise the rights granted to it hereunder. Licensee shall not use the Program or Documentation for any purpose or in any manner except as explicitly stated herein.

1.3. Ownership. Symplicity shall own any and all right title, and interest in and to the Program and the Documentation, including, but not limited to, any and all trademark, copyright, trade secret, patent, and other intellectual property and proprietary rights therein and thereto. Symplicity reserves all right, title, and interest in the Program and Documentation not explicitly and expressly granted to Licensee in this Agreement.

1.4 API License. (a) If Licensee is purchasing an application programming interface (“API”) license or a product with an included API service, Simplicity grants Licensee a limited, non-exclusive, revocable, non-sublicensable, non-transferable license, to access each such API solely for Licensee’s internal business use by its Authorized Users and in accordance with Documentation provided by Simplicity. Licensee may not utilize the APIs to provide data to third party applications except those third parties with valid API licenses with Simplicity. (b) Licensee may not use or install the API(s) for any other purpose without Simplicity’s written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. Simplicity reserves the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of Simplicity services. (c) Upon request, Simplicity may require pre-approval by Simplicity of any implementation or technology deployment by Licensee utilizing the APIs. Licensee agrees to provide Simplicity with reasonable access and information requested by Simplicity to ensure Customer’s compliance in its usage of the APIs

2. Term, Fees

2.1 Term. This Agreement commences from the effective date of the first Order Form between the Parties (the “Effective Date”) and shall continue in force until the expiry of all Order Forms executed by the Parties.

2.2. Fees. (a) For each licensed product or service, Licensee shall pay to Simplicity upon execution of this Agreement and any extensions/renewals thereof the fee referenced in each Order Form which shall not be refunded or prorated for any reason. Any discounts offered to Licensee are reflected in the pricing shown in the Order Form.

(b) Except to the extent indicated to the contrary on an Order Form, subscription products and services shall renew automatically for successive 12 month terms at the then-current pricing unless either party provides written notice of non-renewal at least 90 days prior to the expiry of the applicable term. Any modification to each licensed product or service resulting from the removal of modules or components that involves a decrease in the annual fees will follow the termination requirements of this Section 2.

(c) Except for terminations made in accordance with the requirements of this Section 2 (including applicable notice period requirements), Licensee shall pay all applicable fees set forth in this Agreement for any and all renewal periods of this Agreement for each product, service and instance.

(d) Payments are due net thirty (30) days from the date of Simplicity’s invoice and are subject to late charges thereafter, calculated at the lesser of 2% interest per month (or fraction thereof) or the maximum rate permitted by law. In the event of non-payment, Simplicity may suspend performance or provision of the services, terminate this Agreement in accordance with Section 7, and/or require other assurances, undertakings or deposits to secure Licensee’s payment obligations hereunder.

(e) Any billing dispute must be made in good faith, in writing and, together with all supporting documentation, received by Symplicity within thirty (30) days from the date of receipt of Symplicity's invoice, or the right to dispute such billing shall be deemed to have been waived. Licensee shall otherwise timely pay any undisputed and validly due fees.

(f) Should Licensee decide to use Symplicity's Credit Card Processing Services the fees and procedures are as follows: 5.25% processing fee on all Visa and MC transactions and 6.25% processing fee on all Amex transactions; \$15 fee for charge backs (disputed charge) for those disputes the cardholder wins; processed refunds will be charged the initial processing fee; and all payouts are processed after each fair/event and once per fair/event.

(g) All prices are exclusive of all applicable country, provincial, state and local sales, use, value added, excise, privilege, franchise and similar taxes ("Taxes"). Licensee shall be responsible for all Taxes however designated or levied, against the sale, licensing, delivery, or use of the Products (other than Taxes based upon Symplicity's net income). Taxes shall not be deducted from the payments to Symplicity, except as required by law, in which case Licensee shall increase the amount payable as necessary so that after making all required deductions and withholdings, Symplicity receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made.

3. Professional Services.

3.1. Scope of Service; Change. Any Professional Services to be performed by Symplicity will be described in separately agreed Professional Services Requirements document or Order Form ("PSRA/Statement of Work"). Any changes to the scope contemplated in a Statement of Work must be made by a written change order or amendment to the Statement of Work signed by an authorized representative of each party.

3.2. Services Fees and Expenses. Except as otherwise set forth in a Statement of Work or Order Form, Services are billed on a time and materials basis periodically as work is performed with payment rendered by Licensee under the terms described in the applicable Statement of Work or Order Form or, if provided in the PSRA or Order Form, on a fixed fee basis. Symplicity reserves the right to withhold Services while any fees remain overdue if such fees are not the subject of a bona fide dispute communicated to Symplicity in writing. Licensee will reimburse Symplicity for reasonable out-of-pocket expenses incurred in performance of the Services, which include but are not limited to travel expenses, per diem and mileage, or as may be further described in a Statement of Work. Any prepaid Professional Services must be utilized within 12 months of the initial order and any unused elements expire thereafter without refund.

3.3. Customizations. Simplicity will perform customizations as set out in a Statement of Work in which case Licensee will have the same license usage rights to the customizations as it has to the Licensed Software/Technology licensed hereunder. Customizations are not covered by support services except where separately purchased pursuant to the terms of a separate “Customization Support Services” addendum.

3.4. Services Warranties. Simplicity represents and warrants that the Professional Services will be provided by qualified personnel with reasonable skill and care in accordance with generally accepted industry standards. Simplicity’s obligation respecting its material breach of the foregoing warranties is for Simplicity to re-perform the affected Professional Services, as the case may be, at no additional cost to Licensee.

3.5. Licensee Responsibilities. During a Professional Services engagement Licensee will provide Simplicity with reasonable access to requested resources such as: (i) Licensee’s personnel, facilities, equipment, hardware, software, network and information for Professional Services to be performed, and (ii) timely decision-making, notification of relevant issues or information and granting of approval or permissions as reasonably necessary for Simplicity to perform the Professional Services.

4. Confidentiality.

4.1. Confidential Information. (a) During the Term and thereafter, the Programs, the Documentation, the terms of this Agreement, and any and all other technical and non-technical information provided by or related to Simplicity or its business (“Confidential Information”) shall be proprietary and confidential to Simplicity, and Licensee shall not use, distribute, or make available Confidential Information, or permit such to be done, except as explicitly stated in this Agreement. Confidential Information includes without limitation any and all software, systems, source code, object code, screen displays, methods, processes, inventions, works of authorship, Licensees, vendors, and business plans. (b) Notwithstanding the foregoing, Confidential Information does not include any information independently developed by Licensee without regard to the Confidential Information, information in the public domain, or information disclosed to Licensee by a third party not in violation of any confidentiality restrictions. Upon termination of this Agreement, the Receiving Party shall destroy and provide written confirmation of the destruction of, all Confidential Information received or created pursuant to this Agreement, at the Receiving Party’s sole expense.

4.2. Other Disclosure. If Licensee is required to disclose or make available any Confidential Information pursuant to a valid court order or other legal requirement, Licensee shall promptly notify Simplicity of such requirement in writing in advance and cooperate and assist Simplicity in any efforts undertaken by Simplicity to limit the disclosure. Notwithstanding the foregoing, in all cases of a required disclosure, Licensee shall limit the information disclosed or made available to the minimum required by law.

4.3. Breach; Injunctive and Monetary Relief. Licensee acknowledges that because of the unique and proprietary nature of the Program, the Documentation and the Confidential Information of Symplcity, Symplcity would suffer irreparable harm in the event that Licensee breaches any provision of Sections 1.1, 1.2, 4.1 or 4.4 of this Agreement, and that monetary damages alone would be inadequate to fully compensate Symplcity for such a breach. Accordingly, the parties expressly agree that – in the event of Licensee’s breach of any provision of Sections 1.1, 1.2, 4.1 or 4.4 of this Agreement – that Symplcity shall be entitled, both (i) to immediate injunctive relief as may be necessary to restrain any continuing or further breach by Licensee, without showing or proving any actual damages sustained by Licensee, and also (ii) to all monetary relief available to Symplcity under applicable law. The parties expressly agree that these foregoing equitable and monetary remedies are complementary forms of relief, and are not alternative forms of relief.

4.4 Miscellaneous. Each Party agrees to refrain from making, sending or otherwise communicating or causing to be communicated, any disparaging or derogatory comments, statements or other communications regarding the other Party or take any action, which a reasonable person would expect, directly or indirectly, to impair the goodwill, business reputation or good name of the other Party. Licensee may not provide Program pricing or Documentation to any Symplcity competitor.

5. Warranties.

5.1. Operation. Symplcity warrants that the Program will operate substantially in accordance with the Documentation after it is made available to Licensee. If Licensee discovers any failure of the Program to operate in such manner, Licensee shall promptly notify Symplcity in writing of such failure. Upon receipt of such notice, Symplcity shall undertake commercially reasonable efforts to resolve or fix such failures, provided that such failure can be reproduced and verified by Symplcity using the most recent version of the product or service, and that any nonconformity to applicable Documentation is not caused by customizations or configurations specific to Licensee or any unauthorized modification or misuse of software or service. The remedy set forth in this paragraph shall be Licensee’s sole and exclusive remedy for breach of the warranties provided under this Section.

5.2. Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE PROGRAM AND DOCUMENTATION ARE PROVIDED “AS IS” AND “WITH ALL FAULTS,” AND SYMPLICITY MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INTERFERENCE, ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY, SYSTEMS INTEGRATION, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.

6. Indemnification; Limitations.

6.1. Indemnification by Symplivity. (a) If any third party brings a claim, demand or cause of action (“Demand”) against Licensee alleging that the use of any Symplivity products or technology (the “Subject Technology”) authorized under this Agreement infringes: (1) a U.S. patent issued prior to the Effective Date; or (2) a copyright under applicable law of any jurisdiction, Licensee must promptly notify Symplivity in writing and make no admission in relation to such alleged infringement. In connection with any such claim and provided that Licensee has promptly fulfilled all of the foregoing obligations and Licensee’s use of the Program at all times was in compliance with the Agreement and Documentation, Symplivity shall at its own expense and option: (i) indemnify, defend, and settle such claim, (ii) procure Licensee the right to use the Subject Technology, (iii) modify or replace the Subject Technology to avoid infringement; or (iv) refund the applicable fee paid for the current term relating to the Subject Technology. (b) The foregoing is conditioned on Licensee having notified Symplivity promptly in writing of such Demand, Licensee giving Symplivity sole control of defense and/or settlement thereof (including without limitation all negotiations for settlement and compromise thereof), and Licensee cooperating in the defense thereof at Symplivity’s request, provided that Symplivity will keep Licensee informed of, and will consult with any independent legal advisors appointed by Licensee at Licensee’s own expense regarding the progress of such defense. (c) Licensee shall not incur any costs or expenses on behalf of Symplivity under or pursuant to this Agreement without Symplivity’s advance written consent. (d) Symplivity shall have no liability to Licensee under this Section 6.1 or otherwise for any Demand alleging infringement or violation of applicable privacy or publicity laws based upon: (i) any use of the Program or Documentation in a manner other than as specified by Symplivity; (ii) any combination of the Program or Documentation with other products, equipment, devices, software, systems or data not manufactured by Symplivity (including, without limitation, any software used by Licensee in conjunction with the Program) to the extent such claim is directed against such combination; (iii) data, information, graphics or other media files or other content provided by Customer or any Authorized User, or the use of such content; or (iv) any modifications or customization of the Program or Documentation by any person other than Symplivity (any of the foregoing, separately and collectively, “Licensee Matters”).

6.2. Damages. (a) IN NO EVENT SHALL SYMPPLICITY BE LIABLE TO LICENSEE OR ANY OTHER PERSON OR PERSONS FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND WHATSOEVER ARISING FROM OR CONNECTED WITH THE PROGRAM, DOCUMENTATION, OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, OR LOSS OF BUSINESS, REGARDLESS OF LEGAL THEORY, WHETHER OR NOT FORESEEABLE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND EVEN IF THE REMEDIES OTHERWISE PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. (b) The provisions of Section 6.1 state the entire liability and obligations of Symlicity, and the exclusive remedy of Licensee with respect to claims by any third party alleging infringement of any intellectual property right by Symlicity. The remedies specifically provided by this Agreement and the provisions of this Section allocate between the parties the risks under this Agreement, some of which may be unknown or undeterminable. Such limitations were a material inducement for the parties to enter into this Agreement, and the parties have relied upon such limitations in determining whether to enter into this Agreement.

6.3. Monetary Liability. THE AGGREGATE TOTAL LIABILITY OF SYMPPLICITY UNDER OR IN CONNECTION WITH THE PROGRAM, DOCUMENTATION, OR THIS AGREEMENT TO LICENSEE OR ANY OTHER PERSONS SHALL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNTS PAID BY LICENSEE OVER THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY UNDER THE ORDER FORM OR STATEMENT OF WORK FOR THE APPLICABLE PRODUCT OR SERVICE.

6.4 Other content, Data or Technology. Licensee warrants that customer has all necessary rights to use any content, data or third-party technology that is utilized by customer in conjunction with the licensed Software/Technology.

7. Termination.

7.1 Termination Rights. Ordered products and services are non-cancellable for the Order Term stated on an Order Form. Either party may terminate this Agreement, an Order Form and/or Statement of Work if the other party breaches such Agreement, an Order Form and/or Statement of Work and fails to cure such breach within thirty (30) days of written notice of breach or within seven (7) days in the case of breach for non-payment. Symlicity may terminate this Agreement and any underlying Order Forms or Statements of Work immediately if Licensee breaches any of the terms of Sections 1.1, 1.2, or 1.3.

7.2. Effect of Termination. Upon termination of this Agreement, an Order Form and/or Statement of Work, as the case may be, for any reason: (i) all rights and obligations of the parties under this Agreement and/or such License, Order or Statement of Work will automatically terminate except for rights of action accruing prior to termination, (ii) all amounts due thereunder shall be due within 30 days after the date of termination,. Licensee shall immediately return to Symlicity or destroy all Confidential information and applicable Licensed Software/Technology and Documentation, provided to Licensee, as well as any and all copies thereof. Termination shall not relieve Licensee of any payment obligations arising prior to termination.

7.3. Survival. The terms of Sections 1.2, 1.3, 2, 4, 5, 6, 7 and 8 shall survive any expiration or termination of this Agreement or the licenses granted hereunder.

8. Miscellaneous.

8.1. Notices. All notices, consents, and other communications between the parties under or regarding this Agreement shall be in writing and shall be sent to the recipient's address set forth in the introduction to this Agreement or on the most recent Order Form. Such communications shall be deemed to have been delivered upon receipt by the recipient or two business days after deposit with a reputable overnight courier service. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

8.2. Assignment. This Agreement may not be assigned by Licensee, in whole or in part, by operation or law or otherwise, without the advance written consent of Symlicity, which consent may be withheld in Symlicity's sole discretion. Any attempted assignment in violation of this section shall be void. Symlicity may assign this Agreement upon written notice to Licensee if the assignee agrees to be bound in writing by Symlicity's obligations hereunder.

8.3. Applicable Law and Conflict Resolution. (a) Except for debt recovery or collection actions for amounts due hereunder, or actions for infringement or violation of Simplicity’s intellectual property rights, in the event of any controversy or claim arising out of or relating to this Agreement, an Order Form or Statement of Work, or a breach thereof, the parties will consult and negotiate with each other and attempt to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by any party to the other, any such controversy or claim will be referred to arbitration for full and final settlement by a panel of three arbitrators (or fewer if agreed by the Parties) appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ICC Rules”). (b) All arbitration proceedings will be conducted in the English language and will be conducted pursuant to ICC Rules. Any award issued pursuant to ICC Rules may be enforced by any court of competent jurisdiction. The allocation of the cost of the arbitrators and administration of conducting the arbitration will be borne equally by the Parties and the arbitrator will not have the power to award punitive damages. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. (c) The applicable governing law is the Commonwealth of Virginia, USA without regard to principles of conflicts of law and the place of arbitration is Arlington, Virginia.

8.4. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the parties with respect to the subject matter of this Agreement, and this Agreement supersedes any and all prior or contemporaneous oral or written communications, proposals, representations, and agreements, express or implied. This Agreement may be amended only by mutual agreement expressed in writing and signed by both parties.

8.5. Force Majeure. Except for non-payment of amounts due under this Agreement, neither party shall be liable to the other party for non-performance of this Agreement in whole or in part, if the non-performance is caused by the other party or events or conditions beyond that party’s reasonable control.

8.6 Exclusivity. Simplicity offers Licensee its proprietary hosted Program software and technology products and add-ons described in the Order Forms to this Agreement (“Simplicity Product Components”) as well as applicable related services and support (“Related Services”). Except during the thirty (30) day period prior to the effective date of the termination or expiration of this Agreement, Simplicity shall be the sole and exclusive provider to Licensee of products providing the same or substantially similar functionality (including but not limited to applicable products for evaluation purposes and other non-live environments) to the Simplicity Product Components and of services that are the same or substantially similar to the Related Services for the term of this Agreement.

8.7 Transition Services. If requested by Licensee in writing, Symplcity may offer Licensee with mutually agreeable transition services for a fee during the thirty (30) day period prior to the effective date of the termination or expiration of this Agreement (“Transition Period”). Symplcity and Licensee shall update Order Form of this Agreement to reflect the fees and transition services to be provided by Symplcity during the Transition Period.

8.8 Additional Stipulations. Licensee shall use the Program only in accordance with the Documentation and any reasonable policies and procedures and/or acceptable use policies provided by Symplcity to Licensee as may be in effect from time to time. Licensee permits Symplcity to use the Licensee’s name and logo in conjunction with the provision of services under this Agreement for the benefit of the Licensee’s students. In addition, Symplcity may list Licensee as a participant in Symplcity Recruit network and in any related promotional material, print or electronic, and may use the Licensee’s name and logo on Symplcity owned sites where it lists the participating Licensees.

8.9. Other. (a) The waiver or failure of either party to exercise in any respect any right provided hereunder shall not be deemed a waiver of such right in the future or a waiver of any of other rights established under this Agreement. Agreement, Section, and Paragraph headings are for reference only and shall not affect the interpretation of this Agreement. (b) This Agreement and all of the provisions in this Agreement shall be binding upon and inure to the benefit of the permitted successors in interest and assigns of the parties. (c) The parties do not intend, nor shall any clause be interpreted, to create under this Agreement any obligations or benefits to, or rights in, any third party from either Licensee or Symplcity.

Ref ID: OTC7002U

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.