



STANDARD PURCHASE AND LICENSE TERMS FOR PLATO LEARNING PRODUCTS AND PROFESSIONAL SERVICES

The terms and conditions contained in this document (the “**Standard Terms**”) apply to any sales by PLATO, Inc. d/b/a PLATO Learning (“**PLATO Learning**,” sometimes referred to in this document as “**We**,” “**Us**” and “**Our**”) of (1) license rights to software products, (2) hardware for use with the software, and (3) associated professional services. These Standard Terms are an integral part of an agreement (the “**Agreement**”) between Us and the Customer (referred to as “**You**” and “**Your**”) identified on a PLATO Learning Order Form (an “**Order Form**”). The Agreement consists of (in order of precedence) an Order Form, these Standard Terms, and any documents incorporated by reference into either the Order Form or Standard Terms (including those incorporated by hyperlink reference). You acknowledge that the Order Form and the Standard Terms will supersede and replace any conflicting provisions in Your purchase order or other purchasing documents. The Agreement will be effective as of the Order Date specified on the Order Form and will be binding when the Order Form has been signed by Your authorized representative. Capitalized terms used throughout the Agreement are defined in the Order Form, in section 5.0 (below), and elsewhere in boldface type in these Standard Terms. These Standard Terms may only be superseded by other terms and conditions You and We have specifically documented in a signed Order Form.

1.0 PLATO SOFTWARE. The following terms and conditions will apply to the Software listed on the Order Form:

1.1 Licensing Rights. Your licensing rights and obligations for Your Software products depend on the Software and the type of license You have purchased, as follows:

Software Type	Subscription Software	Perpetual Software
<p>License Grant [Subject to the other provisions of these Standard Terms.]</p>	<p>During the Subscription Period, We grant You:</p> <p>For Subscription Software (except Academic Systems Algebra):</p> <p>A limited license to have Your Users access and use the Subscription Software and associated Documentation solely for Your internal educational purposes, but the number of Your Users who may access the Subscription Software simultaneously is limited to the License Quantity specified in the Order Form. The License Quantity cannot be decreased during the Subscription Period.</p> <p>For Academic Systems® Algebra:</p> <ul style="list-style-type: none"> A limited license to access and use Our Academic Systems Algebra (“ASA”) software and associated Documentation solely to provide educational instruction to Users who have purchased an ASA Student License from You or Your Designated Reseller. The term “ASA Student License” means a limited license for a User to access and use, under the terms of this Agreement, the ASA software and related Documentation solely for educational purposes. The right for You (or Your Designated Reseller) to resell ASA Student Licenses (and provide associated unique logon and password information) to Users who agree to be bound to the terms and conditions of this license. ASA Student Licenses are provided on a consumable, per student, per course license basis. The term of an ASA Student License (the “ASA Student License Term”) will be one year after the User has validated his or her license using such logon and password information. 	<p>For Perpetual Software (except Achieve Now™ for PSP®):</p> <p>We grant You a limited license to install and host the Perpetual Software on Your Computer System and to have Your Users (limited to the number shown as License Quantity in the Order Form) access and use the Perpetual Software and the associated Documentation, solely for Your internal educational purposes purposes.</p> <p>For Achieve Now™ for PSP®:</p> <p>License Grant: This license applies to Our <i>Achieve Now™ for PSP®</i> software and associated third-party licensor software (collectively called “Achieve Now”) for use on a PSP® that We have provided. The term “PSP” means a portable interactive multimedia console marketed under the names <i>PlayStation® Portable</i> and <i>PSP®</i> (which, together with the name <i>Sony®</i>, are registered trademarks of Sony Computer Entertainment of America, Inc. or its affiliates). The Achieve Now software operates with PSPs having a specific version of firmware (the version included with PSPs we provide), and may not work with PSPs having a different version of firmware. We grant You a limited license to have Your Users (limited to the number shown as License Quantity in the Order Form) access and use the Achieve Now software on PSPs as provided by Us (without modification to firmware) and the associated Documentation, solely for Your internal educational purposes (excluding public performance) and subject to the Terms and Conditions described in this Agreement.</p>

1.2 For Subscription Software:

1.2.1 Maintenance and Access. During the Subscription Period, We will maintain the Subscription Software on Our data center servers and will use commercially reasonable efforts to make the Subscription Software available (subject to routine maintenance windows) to You and Your Users via the Internet 24 hours a day, 7 days a week. All access rights for You and Your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in section 1.7).

1.2.2 Outage Periods. The term “**Outage Period**” applies to Subscription Software and means a period of more than 48

consecutive hours in which Your Users are prevented from accessing the Subscription Software due to factors within Our control. Outage Periods exclude (a) planned downtime (for which We will give at least 8 hours notice by publishing maintenance windows on the login pages; or (b) any unavailability caused by an event of Force Majeure. In the unlikely event an Outage Period occurs, upon Your written request we will issue you a credit for the pro-rated share (based on the number of days of any Outage Period in the applicable month) of fees You have paid for the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. You will not be entitled to this credit for any period during which You are in breach of this

Agreement. Your sole and exclusive remedy for an Outage Period will be the credit described in this subsection.

1.3 For Perpetual Software (other than Achieve Now™ for PSP®): You will be responsible for the installation and hosting of the Perpetual Software on Your Computer System for access and use only by Your Users.

1.4 Special Terms For Achieve Now™ for PSP®:

1.4.1 Safety and Use Warnings. THE WARNINGS AND INSTRUCTIONS CONTAINED ON THE WARNING DOCUMENT SUPPLIED WITH EACH PSP [RELATING TO PHOTOSENSITIVITY, EPILEPSY, SEIZURE AND CHOKING HAZARDS AND RESTRICTIONS ON UPDATING OF PSP FIRMWARE] APPLY TO THE USE OF THE PSP AND THE USE OF THE ACHIEVE NOW SOFTWARE WITH THE PSP. YOU ARE RESPONSIBLE FOR ENSURING THAT YOU AND YOUR AUTHORIZED USERS ARE AWARE OF AND COMPLY WITH SUCH WARNINGS AND INSTRUCTIONS.

1.4.2 Improper Firmware Modification. THE WARRANTIES FOR ACHIEVE NOW WILL BE VOID IF THE SOFTWARE IS USED ON A PSP WHERE THE FIRMWARE HAS BEEN MODIFIED CONTRARY TO THE WARNING DOCUMENT PROVIDED WITH THE PSP. YOU ARE RESPONSIBLE FOR ENSURING THAT THE FIRMWARE IS NOT IMPROPERLY MODIFIED.

1.5 General License Terms. All of the above license grants (whether subscription or perpetual) are specifically subject to the following general terms and conditions:

1.5.1 All license grants to access and use the Software and Documentation are non-exclusive, non-transferable and non-assignable, except that the license to Academic System Algebra includes a right to sell limited sublicenses to Your Users on the basis described in section 1.1, above.

1.5.2 We may require Your Users to agree (via “click-wrap” agreement) to reasonable terms of use and restrictions as a condition of their initial access to the Software.

1.5.3 All licenses granted are under intellectual property rights in the Software and Documentation, including copyrights and trade secrets, which We either own or have licensed from third parties. We and our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by Us or our licensors in connection with this Agreement, as well as all related patents, copyrights, trademarks, trade secrets and other intellectual property rights.

1.5.4 All access and use of Software under this Agreement will be subject to Our Privacy Policy, which can be found at <http://www.plato.com/Privacy-Policy.aspx>, which is expressly made a part of this Agreement.

1.5.5 Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated. We reserve the right to revoke any license granted under this Agreement if You fail to promptly cure a material breach of this Agreement after We have provided You with notice of the breach.

1.6 Restrictions. You and Your Users will use the Software and Documentation solely for the purposes stated in the applicable license grants and will not: (i) modify, copy or create derivative works based on the Software or Documentation; (ii) frame or mirror any content forming part of the Software or Documentation, other than for Your own internal educational or training purposes; (iii) reverse engineer, decompile or disassemble the Software; (iv) access or allow others to access the Software or Documentation in order to build, market or offer a competitive product or service, or copy any

ideas, features, functions or graphics of the Software; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than to Users or as otherwise contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (ix) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (x) attempt to gain unauthorized access to the Software or its related systems or networks; or (xi) publicly display or publicly perform the Software or Documentation without Our prior written permission.

1.7 System Requirements. You acknowledge receipt of Our System Requirements document (current version available at <http://support.plato.com/requirements.asp> (“**System Requirements**”) which details the necessary hardware, system configuration, network infrastructure, and bandwidth requirements to successfully operate and use the Software. The System Requirements are subject to periodic change without notice. You also acknowledge that You are responsible for the cost, operation and availability of, and compliance of Your Users with, all elements of the System Requirements.

1.8 Responsibility for User Activity. You are responsible for all activities that occur in User accounts and for compliance by Your Users with these Standard Terms. You will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and notify Us promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply (and ensure compliance by Your Users) with all applicable local, state and federal laws, rules and regulations, including but not limited to the Children’s Online Privacy Protection Act (“COPPA”) and the Family Educational Rights and Privacy Act (“FERPA”).

1.9 Intellectual Property

1.9.1 Reservation of Rights. The Software We are providing is licensed to You, not sold. Subject to the limited rights expressly granted to You and Your Users under these Standard Terms, We reserve all rights, title and interest in and to the Software and Documentation, including all related intellectual property rights (except for those owned by our third party vendors, which are reserved to them). No rights are granted to You or Your Users hereunder other than as expressly specified in these Standard Terms.

1.9.2 Rights to Customer Data. As between You and Us, You exclusively own all rights, title and interest in and to all Customer Data. Customer Data is deemed Your Confidential Information under this Agreement. You hereby grant Us a non-exclusive license to use, modify and distribute the Customer Data solely for the purpose of performing Our obligations to You as specified by the Agreement.

1.9.3 Suggestions. We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the PLATO Software any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the PLATO Software.

1.9.4 Custom Learning Paths

a. Rights to Custom Learning Paths. Certain PLATO Software allows You to customize the sequencing of instructional content to suit Your instructional needs. “**Your Learning**

Paths” refers to the custom learning paths you create using this feature of the PLATO Software. You may have intellectual property rights in Your Learning Paths. You will not, however, have any ownership rights in the PLATO Software or the instructional content they contain.

b. Your Use of Your Learning Paths. You may use Your Learning Paths and distribute them, but only to those schools, campuses, or educational entities directly affiliated with You who have purchased and hold a current and valid license to the PLATO Software used to create and utilize Your Learning Paths.

c. Our Use of Your Learning Paths. We may use Your Learning Paths and may provide them to Our other customers for PLATO Software. Accordingly, You grant Us a worldwide, non-exclusive, perpetual, royalty-free, irrevocable right and license to use, reproduce, display, distribute, modify, and create derivative works from any of Your Learning Paths in conjunction with Our licensing and distribution of the PLATO Software.

1.10 Limited Warranty for Software Products. Subject to the terms of section 4.6, We warrant that the Subscription Software will perform in substantial accordance with the applicable Documentation during the Subscription Period, and that the Perpetual Software will perform in substantial accordance with the applicable Documentation for a period of (1) year after the Start Date. This warranty is contingent on the authorized use of the Software in accordance with the applicable Documentation. If We breach this express warranty, We will at our option and expense: (a) as soon as commercially practical, consistent with industry practice, modify the affected PLATO Software to conform in all material respects with the applicable Documentation, or (b) provide a replacement for the affected PLATO Software which conforms in all material respects with that Documentation, or (c) accept the return of the affected PLATO Software and refund You the portion of Your purchase price attributable to the returned product. This will be Our sole obligation, and Your sole remedy, with respect to any breach of this warranty. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE LICENSED PROGRAM WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS OR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

2.0 THIRD PARTY SOFTWARE AND HARDWARE. The following terms and conditions will apply to Third Party Software and Hardware listed on the Order Form:

2.1 Subject to Provider’s Warranties and Terms. Third Party Software and Hardware products are distributed by PLATO as a reseller. These products are provided subject to the separate license and sale terms, conditions and restrictions provided by the product manufacturer or producer. WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED [INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE] ON ANY THIRD PARTY SOFTWARE AND HARDWARE WE SUPPLY TO YOU.

2.2 Warranty Claims. We will use reasonable commercial endeavors to facilitate warranty claims You make against the manufacturer or producer of such products. **This is our sole obligation relative to these products.**

2.3 Return or Exchange Charges. You will be responsible to pay any return or exchange charges imposed by the third party vendor and to comply with the applicable return merchandise

authorization procedures.

3.0 PROFESSIONAL SERVICES. Professional Services listed on the Order Form will be provided subject to the following terms and conditions:

3.1 Statement of Work. If this Agreement includes Professional Services, the Order Form will include a Statement of Work (“SOW”) in our standard form and a description of the Professional Services. The SOW will define and communicate the goals, scope of services, work plan, and roles and responsibilities of each party as they relate to the delivery of Our Professional Services. The SOW will be governed by the terms of this Agreement.

3.2 Mutual Cooperation. We mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of Professional Services. We may suspend delivery immediately upon written notice if Your employees or agents fail to act accordingly.

3.3 Changes to SOW and Schedule. Any changes to the scope of work under a SOW will be made by a written amendment to the SOW signed by You and Us prior to implementation of the changes. Changes to the scope of work under a SOW may result in additional fees to You. Any changes You make to previously agreed-upon dates for onsite delivery of Professional Services may likewise result in additional charges to You.

3.3.1 Changes Caused by You. You agree to notify Us at least 5 business days in advance of Your intention to reschedule previously confirmed on-site Professional Services sessions. If You do not provide such notice, and We are unable to re-assign the resources scheduled to provide Your Professional Services, We reserve the right to charge You a cancellation fee of up to \$750 for each day cancelled without such notice.

3.3.2 Changes Caused by Us. In the unlikely event we are required to reschedule (except for reasons outside our reasonable control) a previously confirmed on-site Professional Services delivery session, We will use all reasonable efforts to provide You at least 3 business days notice. If We do not provide such notice, and You incur reasonable direct, non-refundable expenses which You have made good faith efforts to avoid, We will upon Your written request (which must include documentation of these expenses) provide You a credit for such expenses. In no case, however, will the amount of credit exceed \$750.

3.4 Acceptance of Services and Warranty.

3.4.1 Acceptance. Upon completion each Professional Services session, We will provide You with an e-mail requesting Your acknowledgement and acceptance of the Professional Services delivered. If You reasonably determine that the Professional Services have not met the objectives and expectations outlined in the SOW, You must provide Us written notice specifying any deficiencies in detail within 10 business days after our request. We will use reasonable commercial efforts to cure any such deficiencies promptly and then resubmit the sign-off form for Your signature. If You do not provide notice of any deficiencies to Us within the 10 day period, Your acceptance of the Professional Services will be considered final. If the objectives and expectations stated in the SOW are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery, You and We will cooperate in good faith to appropriately modify such requirements.

3.4.2 Warranty. We warrant that the Professional Services We provide will be performed in a workerlike manner, in accordance with generally accepted industry standards. For any material breach of this service warranty reported within 30 days after acceptance (under the preceding subsection), We will provide additional Professional Services at Our expense in an effort to

promptly cure the breach.

3.4.3 Failure to Cure. If You give us notice of a material deficiency under subsection 3.4.1 or of a material breach under subsection 3.4.2, and we are unable to cure the deficiency or breach within 60 days after Your notice, You may terminate the directly affected portions of serviced covered by the applicable SOW and obtain a refund of amounts You have paid for the terminated services.

3.4.4 Sole remedies. The remedies specified in this section 3.4 are Your only remedies for Our breach of service warranties or failure to meet the acceptance criteria.

3.5 Compliance with Workplace Rules. We will have the person or persons We assign to perform the Professional Services comply with those of Your workplace rules You have provided to them in advance.

3.6 Subcontractors. We may, in our reasonable discretion, use third party subcontractors to perform any of Our obligations regarding delivery of the Professional Services.

3.7 Expiration of Unscheduled Professional Services. We will use all reasonable efforts to schedule and deliver the Professional Services in accordance with Your schedule and requirements. However, unless we agree otherwise, we retain the right to terminate our obligations to deliver any Professional Services that have not been delivered within 12 months of the Order Date. In this case, We will provide You with 30 days notice of our intent to terminate and You will have 30 days after receipt of Our notice to schedule the Professional Services and avoid expiration.

4.0 GENERAL TERMS

4.1 Fees and Payment

4.1.1 Fees. You agree to pay all amounts due to Us as shown on the Order Form ("Total Fees"). Except as specified in the Order Form or in section 1.2.2 (re Outages) all such amounts are non-cancellable and non-refundable. Amounts due for Software are based on access to Software and are not dependent on actual usage, nor are they contingent upon delivery of any future functionality or features.

4.1.2 Taxes. Except to the extent You provide us with a valid tax exemption certificate authorized by the appropriate taxing authority, We will invoice You for and You will pay any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes associated with Your purchases under this Agreement, except for taxes based on Our net income or property.

4.1.3 Acceptance. All Software and Hardware will be deemed accepted upon delivery to You (or, for Subscription Software, upon making available to You online) and will thereafter be subject to the warranty provisions of this Agreement.

4.1.4 Invoicing & Payment. Unless otherwise stated in the Order Form, fees for products and services will be invoiced at the time of order with payment due net 30 days from the invoice date.

4.1.5 Suspension of Access to Software for Non-Payment. If Your account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of Our other rights or remedies, We reserve the right to suspend Your access to the Software and the delivery of Professional Services, without liability to You, until such amounts are paid in full. For any Perpetual Software, You will also promptly certify that You have de-installed all such software and destroyed all copies of it.

4.2 Confidentiality

4.2.1 Definition of Confidential Information.

"Confidential Information" means all confidential and proprietary information disclosed by one party (the "**Discloser**") to the other (the "**Receiver**") and either designated as confidential or of a type reasonably expected to be confidential. Confidential Information includes the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Customer Data, the Software, business and marketing plans, technology and technical information, product designs, and business processes, but does not include any information that, without breach of obligation owed to Discloser: (a) is or becomes generally known to the public; (b) was known to the Receiver prior to its disclosure by the Discloser; (c) was independently developed by the Receiver; or (d) is received from a third party.

4.2.2 Protection. The Receiver will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser's prior written permission. The Receiver will protect the Confidential Information of the Discloser as if it were the Receiver's own Confidential Information, and at a minimum, with reasonable care. This obligation will survive termination of this Agreement for a period of 3 years.

4.2.3 Compelled Disclosure. If by court order or other legal authority the Receiver is forced to disclose Confidential Information of the Discloser, the Receiver will (to the extent legally permitted) give the Discloser prompt notice of the order and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.

4.2.4 Remedies. If the Receiver discloses or uses (or threatens to disclose or use) any Confidential Information of the Discloser in breach of this section, the Discloser will have the right, in addition to any other available remedies, to seek injunctive relief to prevent further (or the threatened) disclosure.

4.3 Indemnities.

4.3.1 Our Indemnification of You. Subject to the conditions described below and the provisions of section 4.6, We will defend, indemnify and hold You harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called "**Claims**") made or brought against You by a third party, as follows:

a. For Personal Injury or Property Damage. Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or negligence of Our personnel while on Your premises.

b. For Infringement. Our indemnity covers Claims alleging that the use of the PLATO Software as specified in this Agreement, or Our Professional Services, or any information, design, specification, instruction, software, data, material (collectively called "**Material**") furnished by Us in connection with this Agreement infringes the intellectual property rights of a third party. This indemnification does not apply to Hardware, which We resell subject to whatever warranties and indemnities are provided by the manufacturer. We will have no liability for any claim of infringement or misappropriation to the extent (a) the Material is based on specifications You provided, or (b) Your use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material provided to You. If the PLATO Software becomes, or in Our opinion is likely to become, the subject of an infringement claim, We may, at Our option and expense, either procure for You the right to continue using the PLATO Software; replace or modify the PLATO Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected PLATO Software and refund You the portion of Your purchase price attributable to the returned product.

4.3.2 Your Indemnification of Us. Subject to the

conditions described below and section 4.6, and to the extent not prohibited by applicable law, You will defend, indemnify and hold Us harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party alleging that the Customer Data, Your use of the Software in violation of this Agreement, or any Material provided by You either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party.

4.3.3 Conditions. These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.

4.3.4 Exclusive Remedies. Our and Your responsibility for infringements is stated in this section 4.3. The indemnities in this section will be the exclusive remedies for infringements in connection with this Agreement

4.4 Care of Customer Data. We will make regular backups (typically daily) of data entered using our Subscription Software and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such data against loss, but We will not otherwise be responsible for lost Customer Data. You will be responsible for the maintenance of Customer Data held in our application and for replacing it if it is lost for any reason.

4.5 Force Majeure. The term "Force Majeure" means circumstances beyond the reasonable control of a party (such as acts of God, government restrictions, wars, insurrections, labor strife, or failure of suppliers, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. The party affected by an event of Force Majeure will promptly notify the other of the circumstances and the expected impact on its performance. Affected performance obligations will be suspended during the duration of the Force Majeure. In the event the Force Majeure persists for more than 90 days, the other party may terminate the affected portions of this Agreement.

4.6 Disclaimers, Limitations and Exclusions.

4.6.1 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1.10 AND 3.4 OF THIS AGREEMENT, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

4.6.2 Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS OR INDEMNIFICATION OBLIGATIONS ARISING OUT OF PERSONAL INJURIES OR PROPERTY DAMAGE CLAIMS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM YOU FOR A PERPETUAL LICENSE OR, FOR SUBSCRIPTION SOFTWARE, DURING THE SUBSCRIPTION PERIOD. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

4.6.3 Exclusion of Consequential and Related Damages. EXCEPT FOR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT,

SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PRECEDING SENTENCE WILL NOT APPLY TO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, PROVIDED ANY SUCH DAMAGES WILL BE LIMITED TO \$100,000.

4.7 U.S. Governmental Users. The Software and Documentation are "Commercial Items," as defined at 48 C.F.R. §2.101, and are licensed subject to Restricted Rights applicable to Commercial Items and only with those rights expressly granted under this Agreement. The U.S. Government will not be entitled to technical information that is not customarily provided to the public or to use, modify, reproduce, release, perform, display, or disclose the Software or Documentation except as allowed under this Agreement.

4.8 Term and Termination

4.8.1 Term of this Agreement. This Agreement will begin on the Order Date and will, unless earlier terminated in accordance with this section, continue in effect until the end of the last License Period covered by this Agreement.

4.8.2 Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.

4.8.3 Outstanding Fees. Termination will not relieve You of the obligation to pay any fees payable to Us prior to the effective date of termination.

4.9 Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: 1.6, 1.8, 1.9, 2.1, 4.2, 4.3.2, 4.3.3, 4.3.4, 4.6 and 5.0.

4.10 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, We may assign this Agreement in its entirety without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

4.11 Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together will form one legal instrument.

4.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions in these Standard Terms and an Order Form, the terms of the Order Form will prevail.

4.13 Governing Law. If You are a publicly funded, non-profit educational institution, this Agreement will be governed by the

internal laws of the State in which You are situated, without regard to its conflicts of laws rules. In all other cases, this Agreement will be governed by the internal laws of the State of Minnesota, without regard to its conflicts of laws rules.

4.14 Third Parties. There are no third-party beneficiaries to this Agreement.

4.15 Notices. All notices under this Agreement will be in writing and will be deemed given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by confirmed email. Notices to Us will be addressed to the attention of Director of Customer Finance. Notices to You will be addressed to the attention of the person signing the Order Form for You.

4.16 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

4.17 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be subject to modification by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

4.18 Waiver and Cumulative Remedies. No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right. Other than as expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

5.0 DEFINITIONS

- **“Computer System”** means Your server and network equipment (conforming to the System Requirements) used to host and deliver the Software for access and use by Your Users via Your LAN or WAN (i.e. a local area network or wide area network You own and operate which conforms to the Systems Requirements referenced in the Order Form).
- **“Customer Data”** means all electronic data, materials and other information You and/or Your Users (or PLATO Learning on behalf of You or Your Users) have entered or stored in the Software, including, but not limited to data and records relating to student information, performance or use, teacher data and supplemental instructional materials.
- **“Documentation”** means technical specifications, user guides and similar materials accompanying or accessible from the Software, accessible via Our customer support website (<http://support.plato.com>) or provided during the delivery of Professional Services, and any updates We (or our third party licensors) may issue from time to time.
- **“Hardware”** means a hardware product marketed by Us which is listed on the Order Form and is intended to be used in connection with Software provided by Us.
- **“License Period”** means the period of time during which You will have access to the Software You license under this Agreement. This period will begin with the Start Date identified in the applicable Order Form, and (unless earlier revoked in accordance with this Agreement) for Perpetual Software will last forever, and for Subscription Software will last for the duration of the Subscription Period following the Start Date.
- **“License Quantity”** means the maximum number of simultaneous Users granted access to Software as designated in the Order Form.
- **“Order Form”** means the Order Form prepared and offered by

Us and signed by You to indicate Your acceptance of the terms and conditions of this Agreement.

- **“Perpetual Software”** means Software licensed on a perpetual basis (designated by a “P” in the License Type column of the Order Form).
- **“PLATO Software”** means online educational software We market under a brand name owned by PLATO and make available either via Our Internet-based learning management system (for Subscription Software) or via readable media or electronic download (for Perpetual Software). PLATO Software includes Subscription Software and Perpetual Software.
- **“Professional Services”** means fee-based services We provide to You to assist in Your implementation and on-going use of the Software.
- **“Software”** means software marketed by Us which is listed on the Order Form. The term “Software” includes both PLATO Software and Third Party Software.
- **“Subscription Software”** means Software licensed on a subscription basis (designated by an “S” in the License Type column on the Order Form).
- **“Subscription Period”** means the License Period for Subscription Software.
- **“Third Party Software”** means software We acquire from a third party producer for distribution to our customers under licensing terms and conditions specified by the producer.
- **“Users”** means individuals You authorize to use Software and supply (or authorize Us to supply) user identifications and passwords. Users may include but are not limited to Your students and their parents, teachers, faculty and administrators.
- **“Your Designated Reseller”** means a reseller of educational materials, such as a bookstore, that (1) You have authorized as a provider of ASA software to Your Users, and (2) has executed a reseller agreement with PLATO (in the form available at www.plato.com or other form acceptable to PLATO).