

# STANDARD PURCHASE AND LICENSE TERMS

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The terms and conditions contained in this document (the “**Standard Terms**”) apply to any transaction whereby we (sometimes referred to in this document as “**We** “**Us**” and “**Our**”) (1) license rights to software products, (2) provide hardware for use with the software, or (3) provide professional services to Customer (referred to as “**You**” and “**Your**” as identified in more detail on the applicable Order Form (in “**Order Form**”). These Standard Terms are an integral part of an agreement (the “**Agreement**”) that 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 constitute the entire agreement between the parties and will supersede and replace any provisions in Your purchase order or other purchasing documents that do not exactly mirror these terms. 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 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 These Standard Terms may only be superseded or amended by other terms and conditions You and We have specifically documented in a signed Order Form.

**1.0 SOFTWARE.** The following terms and conditions will apply to Your transaction with Us as described in more detail on the Order Form:

**1.1 General License Terms.** All software licenses (subscription or perpetual) are specifically subject to the following general terms and conditions:

**1.1.1** All licenses are non-exclusive, non-transferable and non-assignable.

**1.1.2** We either own or have licensed from third parties all rights necessary to grant the licenses being granted to the Software and Documentation. We or 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 intellectual property rights.

**1.1.3** 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.

**1.1.4** Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated. We reserve the right to suspend or revoke any license granted under this Agreement if You breach this Agreement.

**1.2 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.

**1.3 Subscription Software Operability:**

**1.3.1 Maintenance and Access.** During the Subscription Period, We will use commercially reasonable efforts to make the Subscription Software available (subject to routine

maintenance windows and unavailability not caused by Us) 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 1.4).

**1.3.2 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 completely within Our control during a period that You are not in breach of this Agreement. Outage Periods exclude (a) planned downtime; or (b) any Force Majeure event. If You experience an Outage Period, then upon Your written request we will issue you a credit for the pro-rated share of fees You have paid for usage during 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. Your sole and exclusive remedy for an Outage Period will be the above credit.

**1.4 System Requirements.** Our System Requirements document (found at <http://support.plato.com/requirements.asp>) (“**System Requirements**”) details the necessary hardware, software, system configuration, network infrastructure, and bandwidth requirements to successfully operate and use the Software. The System Requirements are subject to periodic change. You acknowledge that You are responsible for the cost, operation and availability of, and You and Your Users compliance with, all elements of the System Requirements.

**1.5 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.

**1.6 Intellectual Property**

**1.6.1 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 herein, 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 and licensors, which are reserved to them). No other rights are granted to You or Your Users.

**1.6.2 Rights to Customer Data.** As between You and Us, You own all rights, title and interest in and to all Customer Data. You hereby grant Us a non-exclusive, royalty free license to perpetually use, modify, distribute and work with the Customer Data.

**1.6.3 Suggestions.** We will have a royalty-free,

worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Software.

#### 1.6.4 Custom Learning Paths

**a. Rights to Custom Learning Paths.** Certain 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 Software. We make no warranties or commitments related to Your ability to access or use Your Learning Paths during the term of Your licenses or at the expiration or termination of Your licenses.

**b. Our Use of Your Learning Paths.** We may use Your Learning Paths and may provide them to Our other customers.

**c. Customer Created, Modified or Stored Content.** Certain of Our products identified on your Order Form may enable or permit you to create, customize or store content, documentation or otherwise. If You do, you accept, agree and acknowledge that (i) We can use and disseminate such items, (ii) at the expiration or termination of Your licenses, We will not be returning these items to You and you have no rights in such items and (iii) You are responsible for ensuring that all laws, regulations and judicial precedence is followed in such creation, customization or storage, including but not limited to intellectual property laws and you will indemnify Us and our affiliates, successors and assigns in the event you fail to do so.

**1.7 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 general accordance with the applicable Documentation for a period of six months 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 Software to conform in material respects with the applicable Documentation, or (b) provide a replacement for the affected Software which generally conforms with that Documentation, or (c) accept the return of the affected Software and refund You the portion of Your purchase price attributable to the returned product proportionate to the period remaining on your contract. 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.

## 2.0 THIRD PARTY SOFTWARE, HARDWARE AND SERVICES.

The following terms and conditions will apply to all Third Party Software that is included in any of the Software Products You have licensed from Us and all Third Party Software, Hardware and services listed on the Order Form:

**2.1 Subject to Third Party's Warranties and Terms.** Third Party Software and Hardware products and services are distributed by Us as a licensor or reseller. These products are provided subject to the separate license and sale terms, conditions and restrictions required by the third party. WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS

OR IMPLIED [INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE] ON ANY THIRD PARTY SOFTWARE, HARDWARE AND SERVICES WE SUPPLY OR MAKE AVAILABLE TO YOU. IN ADDITION, WE DO NOT GUARANTEE THE AVAILABILITY OF SUCH THIRD PARTY SOFTWARE, HARDWARE OR SERVICES AS SUCH SOFTWARE, HARDWARE OR SERVICES MAY BE MODIFIED OR REMOVED AT ANY TIME.

**2.2 Warranty Claims.** We will use reasonable commercial endeavors to facilitate warranty claims You may make against the third party supplying such products or services. **This is our sole obligation relative to these products or services.**

**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 the rights and obligations 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.

**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 and may result in additional fees to You. Any changes You make to previously agreed-upon dates for onsite or web-based 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.** If we are required to reschedule (except for reasons caused in whole or in part by You or that are outside our reasonable control) a previously confirmed on-site Professional Services delivery session, We will use all reasonable efforts to provide You at least 5 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 Warranty and Acceptance.** We warrant that the Professional Services We provide will be performed in a workmanlike manner and in accordance with the specifics outlined in the SOW. If You reasonably determine that the Professional Services have not met the specifics outlined in the SOW, You must provide Us written notice specifying any deficiencies in detail within 10 business days after the service delivery. We will then use reasonable commercial efforts to cure any such deficiencies promptly which may include Our providing additional Professional Services at our expense. 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.

**3.4.2 Failure to Cure.** If You give us notice under

subsection 3.4.1 and we are unable to cure the deficiency 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.

**3.4.3 Sole remedies.** The remedies specified in this section 3.4 are Your only Professional Services related remedies.

**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 lawful workplace rules You have provided to Us and them in writing in advance.

**3.6 Subcontractors.** We may, in our reasonable discretion, use third parties, including, but not limited to agents, to perform any of Our obligations regarding delivery of the Professional Services.

## 4.0 GENERAL TERMS

### 4.1 Fees and Payment

**4.1.1 Fees.** You agree to timely pay all amounts due to Us as shown on the Order Form. Except if specified in the Order Form or in section 1.3.2 (re Outages) all such amounts are non-cancellable and non-refundable.

**4.1.2 Taxes.** Except to the extent You provide us with a valid tax exemption certificate authorized by the appropriate taxing authority covering all applicable taxes otherwise due and payable, 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, but not limited to, value-added, gross receipts, sales, use or withholding taxes associated with Your license or purchases under this Agreement, except for taxes based on Our net income or real 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.

### 4.2 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 gross negligence of Our personnel while on Your premises.

**b. For Infringement.** Our indemnity covers Claims alleging that the use of the Software as specified in this Agreement, or any information or 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. We will have no liability for any claim of infringement or misappropriation to the extent (a) the Material is based on specifications You provided, (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 or (iii) Your use occurs in a jurisdiction other than the United States. If the 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 Software; replace or modify the Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected Software and refund You the portion of Your purchase price attributable to the returned product for the remaining order period.

**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 (i) 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, or (ii) anyone who has suffered personal injury or property damage based upon You or Your employees, agents or students negligence or intentional misconduct.

**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 exclusive indemnification responsibilities are stated in this section 4.3.

**4.4 Care of Customer Data.** We will make periodic backups of Customer Data entered using our Subscription Software and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such data against loss. We are not 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, communication or data systems, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. 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 upon written notice.

#### **4.6 Disclaimers, Limitations and Exclusions.**

**4.6.1 Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 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 (WHICH ARE LIMITED TO \$50,000 IN THE AGGREGATE FOR ALL CLAIMS AGAINST EITHER PARTY IN ANY CALENDAR YEAR) 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 YOU TO US UNDER THE APPLICABLE ORDER FORM. THE ABOVE LIMITATION WILL NOT APPLY TO EITHER PARTY IN THE EVENT YOUR STATE STATUTES ARE FOUND TO GOVERN THIS AGREEMENT AND THEY SPECIFICALLY PROHIBIT A LIMITATION OF LIABILITY PROVISION.

**4.6.3 Exclusion of Consequential and Related Damages.** 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.

**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, 1.7, 2.1, 4.2, 4.3.1, 4.3.2, 4.3.4, 4.6, 4.9 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 Your consent, in connection with a transaction involving a sale of all or substantially all of Our assets or equity. 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.** This Agreement will be governed by the internal laws of the State of Minnesota, without regard to its conflicts of laws rules unless the statutes or applicable rules governing Your activities where You situated require that the laws of the State where You situated apply, in which case they will, without regard to the conflict or 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.** No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right.

#### **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).
- **"Concurrent License"** means a Subscription License that may be accessed during the Subscription Period by any User, but may only be accessed by one individual User at a time.

- **“Course Enrollment”** shall mean a Consumable License plus the non-exclusive services of a virtual instructor qualified to provide online teaching services associated with the Consumable License.
- **“Consumable License”** means a Subscription License to a single course assigned to a single, Named User. Prior to the Learner Preview Date, a Consumable License may be reassigned to a different Named User, or designated as unassigned and available for future use. The Subscription Period for a Consumable License begins when the course content is first accessed by the Named User and ends one year later.
- **“Customer Data”** means all electronic data, materials and other information You and/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 identified in this Agreement.
- **“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.
- **“Learner Preview Date”** means the date that is (a) for a Consumable License, 14 calendar days, or (b) for a Course Enrollment 21 calendar days, after the course content is first accessed by the Named User.
- **“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.
- **“Named User”** means a specific User identified by name and designated as the sole User of specific license.
- **“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. We reserve the right to discontinue support, maintenance or similar assistance related to any Perpetual Software upon notice to You without any obligation to make payment to You for such discontinuance..
- **“Reusable License”** means a Subscription License whereby only one Named User is designated to use the license at a time, but may be reassigned to another Named User during the Subscription Period. While a Reusable License is assigned to a specific Named User, it may not be used by any other User at any time until reassigned to another Named User.
- **“Software”** means online educational software that We make available either via Our Internet-based learning management system (for Subscription Software) or via readable media or electronic download (for 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 Our Software and Third Party Software.
- **“Site License”** means a Subscription License that may be accessed during the Subscription Term by all authorized Users located in the specific site identified on the Order Form.
- **“Subscription Software”** means Software licensed for a specified period of time (the Subscription Period).
- **“Subscription Period”** means the License Period for Subscription Software as identified on the Order Form.
- **“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 for and for which you’ve purchased adequate licenses for. Users may include Your students and their parents, teachers, faculty and administrators. Users include Named Users.
- **“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 Us in a form required or acceptable to Us.
- **“We”, “Us” or “Our”** means the entity or entities identified on the first page of the Order Form (Plato, Inc., Educational Options, Inc. or Orchard Learning, LLC.)