

PLATO Learning, INC.

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.**

- (a) **"Accept", "accepted", "accepting", and "acceptance"** have the meaning set forth in Section 2 below with respect to Supplier's acceptance of an Order, and the meaning set forth in Section 7 below with respect to PLATO acceptance of Deliverable(s).
- (b) **"Deliverable(s)"** means, as to each Order, the articles, materials, products, goods, work or services described in such Order.
- (c) **"Order"** means (i) a purchase order submitted by PLATO to a Supplier for the purchase of Deliverables described therein at the prices and upon the delivery dates and other terms and conditions set forth in the purchase order, and (ii) these PO Terms which are incorporated by reference and made a part of each purchase order.
- (d) **"PLATO"** means PLATO Learning, Inc., and any of its subsidiaries or affiliates.
- (e) **"PO Terms"** means these Purchase Order Terms and Conditions, as amended, from time to time as posted on PLATO's website on the date each Order is accepted by Supplier.
- (f) **"Supplier"** means a supplier of Deliverables to which an Order is placed or addressed.

2. **ACCEPTANCE OF ORDER.** Placement of an Order by PLATO to Supplier constitutes an offer to purchase from Supplier the Deliverables described in the Order subject to the provisions set forth in the Order. The Order shall be deemed to have been accepted unconditionally by Supplier upon receipt by PLATO of any writing from Supplier indicating acceptance (including a writing transmitted by telecopy, email or other means of electronic transmission), or by any of the following: (i) Supplier's shipment of goods or products (or any portion thereof) described in the Order, or (ii) Supplier's commencement of services described in the Order, [unless Supplier objects to such terms in writing prior to shipping tangible Deliverables or commencing work or services.]

3. **CONTRACT.** When accepted by Supplier, the Order shall form a binding contract expressly limited to the terms and conditions stated in the Order. PLATO hereby objects to and rejects all terms and conditions contained in any Supplier quotation, acknowledgment, confirmation, invoice, packing-slip, counter-offer or other form (including any posting on Supplier's website) that are additional to or different from those stated in the Order. By accepting an Order, Supplier agrees that all such additional or different terms and conditions are ineffective.

4. **PRICE AND PAYMENT.**

- (a) **Price.** The price charged for each Deliverable ordered shall be the lower of (i) the price stated in the Order, or (ii) the price in effect on the date of delivery for the same or similar Deliverables of like quantity and quality. All prices are stated in US Dollars. Unless otherwise stated, all prices are FOB Destination Freight Prepaid (see Section 5(a) below).
- (b) **Price Warranty.** Supplier warrants that the prices and discounts extended under the Order are at least as favorable as the prices and discounts offered to any other customer of Supplier buying the same or similar Deliverables in like quantities as of the date of delivery.
- (c) **Invoice.** To be paid, Supplier must submit to PLATO's Accounts Payable Department an itemized invoice, that: (i) references a valid Order number; (ii) identifies the Deliverables provided (which must match the description in the Order); (iii) specifies the dates of any work or services performed and/or the dates tangible Deliverables were provided; (iv) states the specific total dollar amount owed (in US Dollars); and (v) separately states any federal excise, state and or local taxes, if any. If allowed by the Order, invoices for progress payments must specify the actual work or services performed or partial shipment of Deliverables completed, or milestone(s) completed.
- (d) **Payment.** PLATO will pay the purchase price within thirty (30) days after receipt of an accurate and correct invoice, or within thirty (30) days after PLATO's receipt and acceptance of the Deliverable, whichever is later.
- (e) **Prompt Payment Discounts.** If prompt payment discounts apply to an Order, any discount time will not begin until the Deliverables have been received and accepted by PLATO and an accurate and correct invoice has been received by PLATO. In the event testing is required prior to acceptance, the discount time will begin upon completion of the tests.
- (f) **Partial Delivery/Performance.** Unless otherwise specified in the Order, Supplier must deliver the full quantity of goods or complete to the reasonable satisfaction of PLATO the full quantity of services specified in the order before Supplier may invoice PLATO for such Deliverables. Unless otherwise specified in the Order or agreed to in writing by PLATO, partial deliveries may not be accepted by PLATO.
- (g) **Taxes.** Unless exempt, PLATO will bear all sales, excise and/or use taxes properly imposed by federal, state, municipal or other local authorities in respect to its purchase of Deliverables. Any and all other taxes shall be solely for Supplier's account. Supplier shall promptly notify PLATO in writing of any proposed or contemplated assessment of additional taxes to be borne by PLATO as the result of any audit or other tax review by an applicable government agency, prior to payment of such taxes. PLATO's obligation to pay such additional tax is subject to such notification, which shall permit PLATO an adequate and reasonable amount of time to review the findings of the alleged tax increase prior to Supplier's payment. Supplier shall take all necessary steps to secure the refund of all taxes paid by PLATO that are subsequently deemed inapplicable.
- (h) **Set Off.** PLATO may set off against any monies PLATO owes to Supplier any monies that Supplier owes to PLATO whether or not under the same Order.

5. **DELIVERY.**

- (a) **Delivery Terms.** Terms of delivery are FOB Destination Freight Prepaid, PLATO's receiving dock at 10801 Nesbitt Ave., South, Bloomington, Minnesota, 55437, unless a different destination is specified in the Order, and includes all handling, packaging, shipping, and unloading at the specified destination.
- (b) **Delivery Schedule.** Time is of the essence in performance of Supplier's obligations under each Order. If Supplier's deliveries fail to meet the delivery schedule specified in the Order, PLATO, in addition to its other rights and remedies, may require Supplier to deliver the Deliverables in any manner necessary to speed delivery. Supplier will pay the difference between normal freight and any premium rates required. Supplier shall notify PLATO as soon as Supplier is aware that it will not meet the scheduled delivery date. Invoices covering Deliverables shipped in advance of dates specified will not be paid until the appropriate period after the date specified for

delivery unless PLATO has specifically authorized in writing such advance shipment.

- (c) **Packing and Shipment.** Deliveries shall be made as specified in the Order, without charge for boxing, crating, carting or storage. Supplier shall pack Deliverables to best commercial standards to ensure against damage from weather or transportation and to secure the lowest transportation cost in accordance with the requirements of common carriers. PLATO's Order number, line item number and the price, quantity, Supplier part number and PLATO part number of the Deliverable(s), as listed on the Order, shall be plainly marked on all invoices, packages, bills of lading, shipping orders and packing lists. Packing lists shall accompany each box or package shipment. Supplier will package all Deliverables that are static-sensitive in a manner consistent with industry standards for protection against electrostatic discharge. All Deliverable packaging supplied by Supplier shall be made from materials which do not utilize chlorofluorocarbons in the manufacturing process. PLATO may return to Supplier without charge any Deliverable not properly packaged. Supplier will promptly replace such Deliverable with a properly packaged Deliverable.
- (d) **Risk of Loss and Title.** Unless otherwise specified herein risk of loss and title to the Deliverable(s) provided under each Order shall pass to PLATO upon delivery of the Deliverable(s) by Supplier and acceptance of Deliverable(s) by PLATO.

6. WARRANTY. Supplier warrants the Deliverables as follows:

- (a) **Services:** Supplier represents and warrants that all services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Supplier represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in the applicable Order, and fit for the intended use. Supplier represents and warrants that the performance of services under the Order will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Supplier is bound.
- (b) **Goods:** Supplier warrants that all goods provided will be new and will not be used or refurbished. Supplier warrants that all goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of fifteen (15) months from the date of delivery to PLATO or for the period provided in Supplier's standard warranty covering the goods, whichever is longer. Supplier hereby agrees that it will make spare parts available to PLATO (and its customers) for a period of five (5) years from the date of shipment at Suppliers then current price, less applicable discounts. Additionally, Supplier warrants good title to all goods conveyed to PLATO free from any security interest, lien or encumbrance. Goods purchased shall be subject to all written and oral express warranties made by Supplier's agents, and to all warranties provided for by the Minnesota Commercial Code. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Supplier shall furnish to PLATO Supplier's standard warranty and service guaranty applicable to the goods.
- (c) **Warranty Period.** All warranties shall be effective upon delivery and for at least 90 days following PLATO's acceptance of each Deliverable, unless a longer warranty period is provided in the Order.
- (d) **Warranty Work.** If PLATO identifies a warranty problem with the Deliverables during the warranty period, PLATO will promptly notify Supplier of such problems and will return the Deliverables to Supplier, at Supplier's expense. Within five (5) business days of receipt of the returned Deliverables, Supplier shall, at PLATO's option, either repair or replace such goods (or re-perform such services), or credit PLATO's account for the same. Replacement and repaired Deliverables shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer. Supplier shall pay all transportation charges for returns and replacements.
- (e) **Benefit of PLATO Customers.** All warranties and service guaranties shall run both to PLATO and to its customers.
- (f) **No Modification.** Any attempt to change, add, modify, or delete any warranty provision (including change by use of package labeling, inserts, packing slips, or otherwise) will not be binding on PLATO unless it is agreed to in writing by a PLATO officer or authorized agent.

7. INSPECTION. All Deliverables shall be subject to final inspection and acceptance by PLATO at its facility notwithstanding prior payment or inspection at Supplier's facility. Acceptance of any Deliverables shall not alter or affect the warranties of Supplier. Deliverables may be inspected and/or tested by PLATO at any time, place and stage of production or distribution. If inspected at Supplier's premises, Supplier without additional charge shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. PLATO may base rejection of any or all Deliverables on inspection by sampling or any other reason permitted by Article 2 of the Uniform Commercial Code. Payment shall not constitute PLATO's acceptance of the Deliverables nor impair PLATO's right to inspect and/or test the Deliverables or exercise any of its remedies.

8. REJECTED DELIVERABLES. If Deliverables shipped (or to be shipped) or rendered by Supplier are rejected by PLATO, in whole or in part, by reason of Supplier's failure to comply with any of the terms, conditions and/or specifications of an Order, PLATO may notify Supplier of such rejection, whereupon: (a) risk of loss of such Deliverables shall be upon Supplier until redelivery, if any, to PLATO; (b) PLATO may either return the rejected portion of the Deliverables to Supplier or hold the rejected portion of the Deliverables for such disposal as Supplier may indicate, both at Supplier's risk and expense, without invalidating the remainder of the Order; (c) PLATO may reject the entire shipment of goods or services rendered, and cancel the balance of goods and/or unrendered services. If Deliverables are rejected, PLATO may purchase like Deliverables elsewhere and charge Supplier with any loss or damage (either direct or indirect) sustained by PLATO (including, but not by way of limitation, any difference between the price paid by PLATO for such like Deliverables and the price specified on the face of the Order) plus all costs of collecting the same (including, but not by way of limitation, attorney fees and court costs). PLATO shall not be obligated to pay for any Deliverables that are rejected by it. If Supplier uses a return material authorization in connection with the return of defective Deliverables, Supplier shall give such authorization to PLATO within two work days of Supplier's receipt of PLATO's notice that it intends to return the Deliverable

9. NO CHANGE ORDERS. No change, modification or extension of an Order shall be effective against PLATO unless it is made in a writing making specific reference to the Order and is signed by an authorized representative of PLATO.

10. STOP WORK ORDER. PLATO may at any time by written order to Supplier require Supplier to stop all or any part of the work called for by the Order for a period of up to ninety (90) days after the Order is delivered to Supplier, and for any further period to which the parties may agree. Within the 90-day period or within any extension of that period, PLATO shall without any liability either: (a) cancel the "Stop Work Order" and direct Supplier to resume work, or (b) terminate the work covered by the Order. Unless Supplier has breached any material term or condition of the Order, such termination shall be deemed made under Section 11(a).

11. CANCELLATION.

- (a) **For Convenience.** PLATO may without any penalty, charge or liability cancel an Order or any part hereof at any time prior to acceptance of the Deliverables to be cancelled by serving upon Supplier a written notice. PLATO shall remain liable for any and all

Deliverables which comply with the requirements of the Order and which have been accepted by PLATO.

- (b) **For Cause.** PLATO may in addition to any other available right or remedy cancel an Order or any part hereof at any time without any penalty, charge or liability if any of the following events occur: (a) Supplier fails to make delivery in accordance with the schedule specified herein, (b) in the event of any proceeding by or against Supplier in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors or (c) Supplier otherwise fails to comply with any provision of the Order and such failure is not remedied within ten days after PLATO's notice thereof to Supplier.

12. PLATO'S PROPERTY.

- (a) **Intellectual Property.** PLATO shall own all right, title and interest in all Property conceived or developed in whole or in part by Supplier as a result of an Order. The term "Property" includes all forms of such materials and information, including without limitation specifications, data, documents, drawings, files, input and output materials, media, ideas, inventions, derivatives of pre-existing copyrighted works, software in any format, documentation, and any related material. Any tangible expression of Property which qualifies as a "work made for hire" under the Copyright Act, 17 U.S.C. §101, is expressly agreed by Supplier to be a "work made for hire" with the copyright in the work owned by PLATO. Supplier shall label all Property with a notice indicating evidence of PLATO's ownership
- (b) **Special Tools.** If the price stated includes as a separate item the cost of any special tools acquired by Supplier for the purpose of filling an Order, such special tools shall become the property of PLATO and shall be properly and permanently identified by Supplier as such. Such special tools shall be disposed of as PLATO directs. Supplier shall, to PLATO's reasonable satisfaction, provide proper storage and maintenance of such special tools while in possession of Supplier. PLATO may inspect Supplier's facilities to assure compliance with this provision.
- (c) **PLATO Furnished Materials.** Supplier assumes all risk of loss of all material furnished by PLATO to Supplier for use in performance or fulfillment of an Order.

13. WORK ON PLATO'S PREMISES.

If Supplier's performance of an Order involves work by Supplier on PLATO's premises, or the premises of any third party, as directed by PLATO, Supplier shall:

- (a) **Safeguards.** Provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property, and shall be responsible for and shall indemnify and hold harmless PLATO, its directors, officers, employees and agents from any and all loss, suit, action or claim, including costs and attorney's fees, by reason of injury, including death, to any person or damage to property arising from or in connection with such performance; and
- (b) **Insurance.** Procure and carry during the term of performance of the Order, and for a period of at least one year after completion of Supplier's obligations pursuant to such Order, the following levels of insurance coverage with a reputable and financially sound insurance carrier: (i) workers' compensation insurance as required by applicable law; (ii) employer's liability insurance with limits not less than US \$1 million; (iii) Commercial General Liability, including Products and Completed Operations and Contractual Liability, with a minimum combined single limit of \$2,000,000 per occurrence; and (iv) Excess Liability insurance with limits not less than US \$5 million. Prior to Supplier commencing work on PLATO's premises, Supplier will provide PLATO with an insurance certificate from its insurance carriers for each of the required foregoing insurance coverages, and naming PLATO as an additional insured for Commercial General Liability and Excess Liability insurance. Such public liability and property damage insurance shall also cover the operation of Supplier's vehicles used in the performance of Supplier's operations. Supplier shall require each of its subcontractors (regardless of tier), if any, to carry insurance in accordance with all of the above terms set forth in the preceding sentences.

14. COMPLIANCE WITH LAWS AND REGULATIONS.

- (a) **Compliance With Laws.** Supplier shall comply with all applicable federal, state, and local laws, rules and regulations. Supplier shall indemnify PLATO and its customers for loss or damage sustained because of Supplier's noncompliance with any law, including but not limited to, the Occupational Safety and Health Act of 1970, as amended, the Service Contract Act of 1965, as amended, the Environmental Protection Agency regulations concerning hazardous materials and the Equal Employment Opportunity clauses prescribed by Executive Orders regarding nondiscrimination because of race, creed, color, sex, age, national origin, physical or mental handicap or veteran status, the Family Educational Rights and Privacy Act (FERPA), and all lawful orders, rules and regulations promulgated under such laws. Supplier certifies that all Deliverables to be furnished to PLATO will be manufactured in compliance with the Fair Labor Standards Act of 1938, as amended.
- (b) **Additional Terms.** If any Deliverables ordered are purchased pursuant to or for incorporation into Deliverables sold under a United States Government contract or subcontract, the terms required to be inserted in the Order by that contract or subcontract shall be deemed to be a part of the terms and conditions of such Order.
- (c) **Supplier Furnished Information.** Supplier shall furnish to PLATO all information required by PLATO to enable PLATO to comply with the requirements of any government agency.
- (d) **Gratuities.** PLATO may, by written notice to Supplier, cancel an Order if it is found by PLATO that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by Supplier, or any agent or representative of Supplier, to any officer or employee of PLATO with a view toward securing an Order or securing favorable treatment with respect to the awarding or amendment, or the making of any determination with respect to the performance of, the Order. In the event the Order is terminated by PLATO pursuant to this provision, PLATO shall have no additional liability to Supplier except to pay for Deliverables delivered in accordance with the Order, up to the date of termination, that are not returned by PLATO.
- (e) **Commitment to Affirmative Action/EEO.** PLATO is an affirmative action, equal opportunity employer and conforms to all applicable employment-related legal requirements. Supplier agrees to seek qualified handicapped, veteran, minority and female individuals to perform services for PLATO and further agrees that the individuals assigned to PLATO by Supplier will be selected without regard to race, color, sex, sexual orientation, religious creed, national origin, ancestry, marital status, medical condition or physical handicap.

Without limiting the foregoing, both parties agree to comply, to the extent applicable, with the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, (60-1.4), section 503 of the Rehabilitation Act of 1973, (60-741.5), and section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (60-250.4), as well as any other regulation pertaining to these orders.

15. LIMITATION OF LIABILITY. IN NO EVENT WILL PLATO BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, FAILURE TO REALIZE EXPECTED SAVINGS OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND), IN CONNECTION WITH AN ORDER, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING NEGLIGENCE, EVEN IF PLATO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PLATO'S AGGREGATE LIABILITY UNDER ANY ORDER EXCEED THE PURCHASE PRICE OF DELIVERABLES INCLUDED IN SUCH ORDER. THE ABOVE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

16. CONFIDENTIALITY. The contents of each Order and all related commercial and technical information shall be kept secret and confidential by Supplier and will not be divulged by Supplier to any third party or employed by Supplier other than in connection with fulfillment of an Order. Unless otherwise agreed in writing by authorized representatives of PLATO and Supplier, no commercial or technical information disclosed in any manner or at any time by Supplier to PLATO shall be deemed secret or confidential and Supplier shall have no rights against PLATO with respect thereto except such rights as may exist under any applicable patent law.

17. PATENTS, COPYRIGHTS, TRADE SECRETS AND OTHER PROPRIETARY RIGHTS.

- (a) **Warranty of Noninfringement.** Supplier warrants that the Deliverable(s) (including without limitation each component and any unit or part thereof) provided under an Order, and the use thereof by PLATO and its customers, will not infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any third party.
- (b) **Indemnification.** In the event of any claim by a third party against PLATO asserting or involving a patent, copyright, trade secret, or proprietary right violation involving any Deliverable acquired by PLATO under the Order, Supplier will defend, at its expense, and will indemnify and hold harmless PLATO against all loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful, provided that Supplier is notified by PLATO in writing within a reasonable time after PLATO first receives written notice of any such claim, action, or allegation of infringement.
- (c) **Injunction.** In the event an injunction or order shall be obtained against PLATO's use of the Deliverable by reason of infringement allegations, or if in Supplier's opinion the Deliverable is likely to become the subject of a claim of infringement or violation of a patent, copyright, trade secret or other proprietary right of a third party, Supplier shall, at its option and its expense: (i) procure for PLATO the right to continue using the Deliverable, (ii) replace or modify the same so that it becomes noninfringing (which modification or replacement shall not adversely affect the specifications for or the use or operation by PLATO of the Deliverable) or (iii) if neither (i) nor (ii) above is reasonably available, remove the Deliverable and all other Supplier-supplied Deliverables with which the infringing Deliverable is integrated, refund the price and all associated transportation costs paid therefor by PLATO, and secure a release of PLATO from any further liability.

18. NON-SOLICITATION OF PLATO EMPLOYEES. During the performance of each Order, and for a period of nine (9) months thereafter, Supplier agrees not to solicit, or assist any other party to solicit, for employment or consulting any employee of or consultant to PLATO (collectively the "PLATO Personnel"). In the event Supplier solicits, or assists any other party to solicit, for employment any PLATO Personnel, and the PLATO Personnel is hired in any form or manner by Supplier or any other party for whom Supplier made a solicitation, Supplier agrees to pay PLATO a one-time placement fee of \$60,000 per PLATO Employee so hired. The foregoing provisions shall not apply to any PLATO Personnel who (a) leave the employment of PLATO for any reason without any solicitation, directly or indirectly, by Supplier, or (b) posts his/her resume and/or employment availability in a newspaper, job board or other media generally accessible to the public.

19. NON-CIRCUMVENTION. Supplier acknowledges the value of PLATO's relationship with its customers (the "PLATO Customer"). During the performance of each Order, and for a period of twelve (12) months thereafter, Supplier agrees not to (a) compete with PLATO for PLATO Customer business, or (b) circumvent PLATO directly or indirectly in any effort to gain fees, commissions, remunerations or other consideration to the detriment of PLATO. This non-circumvention provision extends to any transaction with any actual or potential PLATO Customer.

20. INDEPENDENT CONTRACTOR. PLATO is interested only in the results obtained under each Order. The manner and means of achieving the results are subject to Supplier's sole control. Supplier is an independent contractor for all purposes, without express or implied authority to bind PLATO by contract or otherwise. Neither Supplier nor its employees, agents or subcontractors ("Supplier's Assistants") are agents or employees of PLATO, and therefore are not entitled to any employee benefits of PLATO, including but not limited to, any type of insurance. Supplier shall be responsible for all costs and expenses incident to performing its obligations under this Agreement and shall provide Supplier's own supplies and equipment. Nothing in any Order shall be construed to create a partnership, joint venture, employer-employee, franchisor-franchisee, or any agency relationship between Supplier and PLATO.

21. INDEMNIFICATION. Supplier shall defend, indemnify and hold PLATO harmless against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any obvious or apparent defects or latent defects in the goods or services purchased under any Order, or from any act or omission of Supplier, its agents, employees or subcontractors. This indemnification shall be in addition to all other obligations of Supplier under any Order.

22. ELECTRONIC ORDERS. PLATO may place Orders in writing or by electronic means. Electronic transactions shall be deemed to satisfy any legal formalities requiring that agreements be in writing in accordance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001).

23. FERPA. If Supplier has access to students' educational records, Supplier shall limit its employees' access to the records to those persons for whom access is essential to the performance of the Deliverables described in an Order. At all times during performance of Deliverables under an Order, Supplier shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 in all respects.

24. ADVERTISING AND PROMOTION. Except as required by law, Supplier will not publicize an Order or the transactions contemplated by such Order, nor shall Supplier use in any manner the name, logo or trademarks of PLATO or its affiliates, without the prior written approval of PLATO's authorized officer. This provision applies to all forms of publicity, including but not limited to, press releases, paid advertisements,

announcements at public events, trade shows, conferences, promotional flyers, websites that contain references to Supplier's goods or services, and other materials.

25. ENTIRE AGREEMENT. Unless otherwise approved in writing signed by PLATO's authorized agent, each Order and any attachments thereto submitted by PLATO constitute the final, complete and exclusive statement of the terms of the agreement between the parties with respect to the Deliverables described in such Order and supersedes all prior and contemporaneous offers, negotiations, agreements, discussions, and understandings, express or implied, whether oral or written, with respect to the Deliverables described in such Order.

26. MISCELLANEOUS PROVISIONS.

- (a) **Force Majeure.** Neither party shall be liable for delays or defaults due to fire, windstorm, riot, act of God, act of the public enemy, or, except for defaults or delays by subcontractors, other similar unforeseeable cause beyond the reasonable control and without the fault or negligence of the party incurring such delay. Supplier shall notify PLATO in writing of the existence of such cause within five days after the commencement of the delay or default.
- (b) **Governing Law.** Orders shall be governed by and construed in accordance with the laws of the State of Minnesota and the United States of America without reference to conflict of laws principles. Any dispute arising under any Order shall be subject to the exclusive jurisdiction and venue of the federal or state courts located in Hennepin County, State of Minnesota. Supplier irrevocably consents to the personal and exclusive jurisdiction and venue of these courts.
- (c) **Severability.** If any provision of an Order is held by any court or other tribunal to be invalid, illegal or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If any court or other tribunal finds that any provision of an Order is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- (d) **Non-Assignment.** Neither the Order nor any right or obligation of Supplier hereunder may be assigned or delegated by Supplier, by contract, merger, operation of law, or otherwise, to any other party without the prior consent of PLATO which may be granted at PLATO's sole discretion. Supplier is not permitted to engage subcontractors in connection with the performance of its obligations to PLATO hereunder without the prior written consent of PLATO.
- (e) **Non-Waiver.** The failure of PLATO to strictly enforce any provision of an Order shall not be construed as a waiver or limitation of PLATO's right to enforce and compel strict compliance with every provision of that Order or any other Order.
- (f) **Attorneys' Fees.** If either party commences litigation to enforce any provision of an Order, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs at trial and upon appeal.
- (g) **Notices.** Any notices required or permitted under this Agreement shall be given to the appropriate party at the address set forth above in this Agreement, or at such other address as may be specified in compliance with this Section. Such notice shall be deemed given upon personal delivery; or, if sent by telephone facsimile, upon confirmation of receipt; or if sent by Federal Express or some other nationally recognized delivery service and with a signature requested, on the date of delivery of such service; or, if sent by certified or registered mail, postage prepaid, upon five (5) days after the date of mailing.
- (h) **Export Control.** Supplier is responsible for complying with all applicable export control regulations. Any such export controlled Deliverables must be properly handled and labeled by Supplier as part of Supplier's responsibility when the Supplier transfers such Deliverables to PLATO.
- (i) **Dispute Resolution.** Any controversy or claim arising out of or relating to an Order (excepting any claims for injunctive or equitable relief, or relating to ownership or infringement of intellectual property, all of which must be brought in a court having jurisdiction) shall be submitted to final and binding arbitration in Minneapolis, Minnesota, in accordance with the commercial rules of the American Arbitration Association ("AAA").
- (j) **Amendments and Updates.** PLATO reserves the right to modify, amend, restate and update these Purchase Order Terms and Conditions from time to time, without prior notice. Updated Purchase Order Terms and Conditions will be effective immediately upon posting on this website and will apply to all Orders accepted by Supplier on or after the effective date of change (but will not affect Orders accepted by Supplier prior to the effective date of change). PLATO may (but is not obligated to) also provide Supplier notice of the update by (1) emailing Supplier the updated Purchase Order Terms and Conditions, or (2) mailing Supplier the updated Purchase Order Terms and Conditions, or (3) attaching the revised Purchase Order Terms and Conditions to any Order placed subsequent to the revision. In all events, Supplier is responsible for regularly reviewing the Purchase Order Terms and Conditions on this site. By accepting an Order after the effective date, Supplier agrees to be bound by the then current version of these Purchase Order Terms and Conditions.