

**IMPORTANT – READ CAREFULLY**

THIS LICENSE AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR A SINGLE ENTITY) AND PLATO LEARNING (“PLATO LEARNING”) FOR SIMULTANEOUS ACCESS TO USE THE PLATO<sup>®</sup> WEB LEARNING NETWORK PROGRAM(S) (SOFTWARE PRODUCT). THE SOFTWARE PRODUCT YOU ARE BEING GRANTED ACCESS TO INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED MEDIA, PRINTED MATERIALS, AND ELECTRONIC DOCUMENTATION. BY ACCESSING THE SOFTWARE PRODUCT YOU EXPRESSLY AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT ACCESS OR USE THE SOFTWARE PRODUCT.

**1. Definitions.**

- a. “Authorized Users” means the total number of concurrent users permitted to access the Software Product, as identified on the Account Sheet.
- b. “Documentation” means any electronic or printed materials accompanying the Software Product and license.
- c. “Server” means the computer owned and/or operated by PLATO Learning from which the Software Product is made available.
- d. “Site” means PLATO Learning’s web site at [www.platoweb.com](http://www.platoweb.com).
- e. “Term” means the term of this Agreement as identified on the Account Sheet.
- f. “Account Sheet” means the Account Sheet attached to this Agreement and fully executed by the parties.
- g. “Territory” means the country or territory identified in the Account Sheet.
- h. “You” means the signing licensee, either as an individual or an entity.

**2. Limited License to Access the Software Product.** PLATO Learning grants to You a non-exclusive, non-transferable, non-sublicensable, limited license to use and access the Software Product within the Territory via the Internet, for not more than the total number of authorized users and for the Term of this Agreement. Except as otherwise provided herein, PLATO Learning reserves all right, title and interest in and to the software product.

**3. Limitations on Use.** You may not: (1) copy, modify, distribute, sublicense, sell, lease, publicly display or publicly perform any portion of the Software Product or Documentation; (2) transfer the Software Product or provide access to the Software Product, to any party other than Authorized Users; (3) prepare derivative works from the Software Product or Documentation; (5) decompile, disassemble, or reverse engineer the Software Product, in whole or in part; (6) use the Software Product to provide processing services to third parties, or otherwise use the Software Products on a “service bureau” basis, or (7) otherwise attempt to use the Software Product from any site or server other than the Server and the Site.

**4. Other software.** If PLATO Learning provides to You any software other than the Software Product, such software will be subject to separate terms, conditions and restrictions provided with such software.

**5. Rights of third parties reserved.** This Software Product contains Macromedia Shockwave Player and Macromedia Flash Player software by Macromedia, Inc., Copyright 1995-1999, Macromedia, Inc. All rights reserved. MACROMEDIA, SHOCKWAVE, and FLASH are trademarks of Macromedia, Inc. This Software Product may also contain other software or plug-ins protected by copyright or other intellectual property laws.

**6. Documentation.** By purchasing the license to this Software Product, PLATO Learning grants to You, during the Term, a non-exclusive, non-transferable, non-sublicensable, limited license to use the Documentation in association with the Software Product. You may not copy, reproduce, modify, prepare derivative works of, publicly display or publicly perform the Documentation without written permission from PLATO Learning or the copyright owner, except as otherwise specified in the Documentation.

- 7. Intellectual Property Rights.** PLATO Learning or its suppliers retain all intellectual property rights (including but not limited to patent, trademark, copyright, trade secret and other rights), title, and interest in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, code, and “applets” incorporated into the Software Product), and the Documentation, including without limitation any patents, copyrights, trademarks or other intellectual property rights related thereto. The Software and Documentation are confidential materials owned by PLATO Learning. By accepting the terms of this agreement, You agree to (i) abide by the scope of the license to the Software Product and Documentation and (ii) to use Your best efforts not to distribute or use Software Products and Documentation by any third parties other than Authorized Users.
- 8. Trademarks** – PLATO ® is a registered trademark of PLATO Learning, Inc. CyberEd ® and Future Education Tomorrow® are registered trademarks of CyberEd, Inc. Standards ToolKit® and Record Keeping & Reporting® are registered trademarks of TeachMaster Technologies, Inc.
- 9. Fees.** In consideration of the license granted to You pursuant to Section 2, You agree to pay PLATO Learning the non-refundable fee, due and payable in accordance with the payment schedule specified in the signed Client Order Form or Purchase Agreement. All charges and fees provided for in this Agreement are exclusive of any taxes, duties or similar charges imposed by any government (including without limitation any withholding taxes) and all amounts payable hereunder shall be made without deduction for taxes, duties or charges.
- 10. Term and Termination.** This agreement will take effect on the date of execution of this Agreement and will remain in effect until the earlier of the expiration of the Term or termination by either party in accordance with this Section 10.
- 10.1. Termination by You.** You may, by written notice to PLATO Learning, terminate this Agreement if PLATO Software is in material breach of any term, condition or provision of this Agreement, which breach is not cured within thirty (30) days after You give PLATO Learning written notice of such breach.
- 10.2. Termination by PLATO Learning.** PLATO Learning may, by written notice to You, terminate this Agreement if any of the following events (“Termination Events”) occur:
- 10.2.1. You fail to pay any amount due PLATO Learning within thirty (30) days after PLATO Learning gives you written notice of nonpayment; or
- 10.2.2. You are in material breach of any non-monetary term, condition or provision of this Agreement, which breach is not cured within thirty (30) days after PLATO Learning gives you written notice of such breach; or
- 10.2.3. You (a) terminate or suspend Your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors, or become subject to direct control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding under any federal or state statutes or other statutes of the country in which You are organized.
- If any Termination Event occurs, termination will become effective immediately, or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding the treatment of confidential information hereunder, provisions relating to the payment of amounts due, governing law or provisions limiting or disclaiming PLATO Learning’s liability, which provisions will survive termination of this Agreement.
- 10.3 Effect of Termination.** Within thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, You shall return the Software Products and all partial and complete copies, all Documentation relating thereto, and any other of PLATO Learning’s confidential information in your possession that is in tangible form and shall destroy/erase any of PLATO Learning’s confidential information in electronic form. You shall furnish PLATO Learning with a certificate signed by one of Your executive officers verifying that the same has been done.

- 11. Applicable Law.** If this Software Product was licensed to You in the United States, this Agreement is governed by the laws of the State of Minnesota and You hereby consent to the exclusive jurisdiction in the courts located in the State of Minnesota. If the Territory in which this Software Product was licensed to You is in Canada, this Agreement is governed by the laws of the Province of Ontario, Canada, and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario and further agrees to commence any litigation which may arise hereunder in the courts located in the Judicial District of York, Province of Ontario. If this Software Product was licensed to You in a Territory outside the United States or Canada, then local law may apply.
- 12. LIMITED WARRANTY.** PLATO Learning, warrants that the Software Product will perform substantially in accordance with the Documentation for a period of one year after the date of execution of this Agreement. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM JURISDICTION TO JURISDICTION.
- 13. NO OTHER WARRANTIES.** EXCEPT AS SET FORTH ABOVE, PLATO LEARNING, AND ITS SUPPLIERS, MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING OR RELATING TO THE SOFTWARE PRODUCT OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT OR AT THE SITE, INCLUDING WITHOUT LIMITATION, MAINTENANCE OR SUPPORT SERVICES, PLATO LEARNING SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT, WITH RESPECT TO THE SOFTWARE PRODUCT, THE DOCUMENTATION AND SAID OTHER MATERIALS AND SERVICES AND WITH RESEPECT TO THE USE OF ANY OF THE FOREOING. PLATO LEARNING ALSO MAKES NO REPRESENTATION OR WARRANTY REGARDING THE IMPROVEMENT OF STUDENTS GRADES OR ANY OTHER MEASURE OF IMPROVEMENT.
- 14. LIMITATION OF LIABILITY.** IN NO EVENT SHALL PLATO LEARNING, OR ITS SUPPLIERS, BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF USE, COST OF COVER, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE INABILITY TO ACCESS PLATO LEARNING'S SERVER, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, OR OTHERWISE ARISING FROM THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, EVEN IF PLATO LEARNING, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.
- 15. Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- 16. Non-assignment/Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by You, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of PLATO Learning, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 17. Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

- 18. Integration.** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.
- 19. Superseding Terms.** No terms, provisions or conditions of any purchase order, acknowledgment or other business form that You may use in connection with the acquisition or licensing of the Software Product will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of PLATO Learning to object to such terms, provisions or conditions.
- 20. Compliance with applicable laws.** You hereby represent and warrant that You will act in full compliance with all applicable laws and regulations in using the Software Product, including but not limited to laws dealing with the protection of privacy and the collection of data, such as The Family Educational Rights and Privacy Act (FERPA), 20 USC § 1232(g) and the regulations thereunder, 34 CFR Part 99, and the Children's Online Privacy Protection Act, 15 USC §§ 6501 - 6505, and the regulations thereunder, 16 CFR Part 312. You shall indemnify and hold PLATO Learning harmless from and against any and all claims, damages, fines, and other actual or alleged liabilities, including its reasonable attorneys' fees, arising out of Your breach of its representations or warranties hereunder.
- 21.** You shall distribute and collect from each student under the age of 13 to whom access to the PLATO Web Products is granted, the parental consent form that can be accessed through the PLATO Web Products Privacy Policy located at the bottom of every page within the PLATO Web Products. You represent and warrant that You will collect all necessary consent forms and return them to PLATO Learning prior to allowing any child under the age of 13 to use the PLATO Web Products. You shall indemnify and hold PLATO Learning harmless from and against any and all claims, damages, fines, and other actual or alleged liabilities, including its reasonable attorneys' fees, arising out of Your failure to collect such consent forms.