

## DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) supplements the Terms of Use or other written or electronic agreement between Atomic Jolt and Customer for the provision of online services (including associated Atomic Jolt offline or mobile components) from Atomic Jolt (identified either as “**Services**” or otherwise in the applicable agreement, and hereinafter defined as “**Services**”) (the “**Agreement**”). For the purposes of this DPA only, and except where indicated otherwise, the term “Customer” shall include Customer and Authorized Affiliates. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

This DPA reflects the parties’ agreement on the terms governing the processing and security of Customer Personal Data in connection with the Data Protection Laws. This DPA shall not replace any comparable or additional rights relating to processing of Customer Personal Data contained in Customer’s Agreement. This Agreement does not apply to User Data of which Atomic Jolt is the data controller and may use in accordance to the terms of the Agreement.

### HOW TO EXECUTE THIS DPA:

1. This DPA consists of two parts: the main body of the DPA, and Annex 1
2. To complete this DPA, Customer must complete all information and signatures included throughout this document, as a data controller and data exporter.
3. Submit the completed and signed DPA to Atomic Jolt. A PDF will be sent from Atomic Jolt and made available on your device.

Upon receipt of the validly completed DPA by Atomic Jolt, this DPA will become legally binding. The terms of this DPA shall take effect on the Effective Date.

### HOW THIS DPA APPLIES TO CUSTOMER AND ITS AFFILIATES

If the Customer entity signing this DPA is a party to the Agreement, this DPA is an addendum to and forms part of the Agreement.

If the Customer signing this DPA is a party to an order form for Services with Atomic Jolt pursuant to the Agreement (“**Order Form**”), but is not itself a party to the Agreement, this DPA is an addendum to that Order Form and applicable renewal Order Forms.

If the Customer signing this DPA is neither a party to the Agreement nor an Order Form, this DPA is not valid and is not legally binding. Such entity should request that the Customer who is a party to the Agreement executes this DPA.

## DATA PROCESSING TERMS

### 1. DEFINITIONS

**1.1** In this DPA the terms have the following meaning:

“**Affiliate**” means an entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

**“Authorized Affiliate”** means any of Customer's Affiliate(s) which (a) is subject to the Data Protection Laws, and (b) is permitted to use the Services pursuant to the Agreement between Customer and Atomic Jolt, but has not signed its own Order Form with Atomic Jolt and is not a "Customer" as defined under the Agreement.

**“CCPA”** means the California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100 to 1798.199) and its implementing regulations, as amended or superseded from time to time

**“Customer”** means the entity or individual registered for the Atomic Jolt account.

**“Customer Personal Data”** means personal data that is processed by Atomic Jolt on behalf of Customer in Atomic Jolt’s provision of the Services.

**“Data Protection Laws”** means all laws and regulations, including laws and regulations of the European Union, the European Economic Area, Switzerland, and those of the State of California applicable to the processing of personal data under the Agreement.

**“Effective Date”** means, as applicable: (a) May 25, 2018, if Customer agreed to this DPA prior to or on such date; or the date on which Customer agreed to this DPA, if such date is after May 25, 2018.

**“GDPR”** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

**“Atomic Jolt”** means Atomic Jolt, LLC

**“Standard Contractual Clauses”** means the agreement executed by and between Customer and Atomic Jolt pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, amended as indicated (in square brackets and italics).

**“Sub-processor”** means any processor engaged by Atomic Jolt or a member of the Atomic Jolt Group.

**“Users”** means individuals authorized by Customer to access the Services through the Customer’s Atomic Jolt account.

**“User Data”** means any personal data relating to Customer or its Users, employees, officers or contractors provided to or obtained by Atomic Jolt in the provision of the Services.

**1.2** The terms **“controller”**, **“data subject”**, **“personal data”**, **“processing”**, **“processor”** and **“supervisory authority”** as used in this DPA have the meanings given in the GDPR.

## **2. PROCESSING OF PERSONAL DATA**

### **2.1 Roles of the Parties.**

The parties acknowledge and agree that with regard to the processing of Customer Personal Data, Customer is the controller, Atomic Jolt is the processor or service provider and that Atomic Jolt or members of the Atomic Jolt Group will engage Sub-processors pursuant to the requirements set forth in Section 5 “Sub-processors” below.

## **2.2 Customer's Processing of Personal Data.**

Customer shall, in its use of the Services, process Customer Personal Data in accordance with the requirements of Data Protection Laws. For the avoidance of doubt, Customer's instructions for the processing of Customer Personal Data shall comply with Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Data and the means by which Customer acquired Customer Personal Data.

## **2.3 Atomic Jolt's Processing of Customer Personal Data.**

Atomic Jolt shall only process Customer Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) processing in accordance with the Agreement; (ii) processing initiated by Customer's Users in their use of the Services; and (iii) processing to comply with other documented reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Agreement.

## **2.4 Details of the Processing.**

The subject-matter of processing of Customer Personal Data by Atomic Jolt is the performance of the Services pursuant to the Agreement. The duration of the processing, the nature and purpose of the processing, the types of Customer Personal Data and categories of data subjects processed under this DPA are further specified in Annex I attached hereto. These instructions also describe the duration, object, scope and purpose of the processing.

# **3. RIGHTS OF DATA SUBJECTS**

## **3.1 Data Subject Requests.**

Atomic Jolt shall, to the extent legally permitted, promptly notify Customer if Atomic Jolt receives a request from a data subject to exercise the data subject's rights under CCPA and/or GDPR ("**Data Subject Request**"). Taking into account the nature of the processing, Atomic Jolt shall assist Customer by appropriate technical and organizational measures, insofar as this is commercially possible, for the fulfillment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, Atomic Jolt shall upon Customer's request provide commercially reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent Atomic Jolt is legally permitted to do so and the response to such Data Subject Request is required under Data Protection Laws. To the extent legally permitted, Customer shall be responsible for any costs arising from Atomic Jolt's provision of such assistance.

# **4. ATOMIC JOLT PERSONNEL**

## **4.1 Confidentiality.**

Atomic Jolt shall ensure that its personnel engaged in the processing of Customer Personal Data are informed of the confidential nature of the Customer Personal Data, have received appropriate training on their responsibilities and have executed written confidentiality agreements. Atomic Jolt shall ensure that such confidentiality obligations survive the termination of the personnel engagement.

## **4.2 Reliability.**

Atomic Jolt shall take commercially reasonable steps to ensure the reliability of any Atomic Jolt personnel engaged in the processing of Customer Personal Data.

### **4.3 Limitation of Access.**

Atomic Jolt shall ensure that Atomic Jolt's access to Customer Personal Data is limited to those personnel performing Services in accordance with the Agreement.

## **5. SUB-PROCESSORS**

### **5.1 Appointment of Sub-processors.**

Customer acknowledges and agrees that (a) Atomic Jolt's Affiliates may be retained as Sub-processors; and (b) Atomic Jolt and Atomic Jolt's Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Atomic Jolt or an Atomic Jolt Affiliate has entered into a written agreement with each Sub-processor containing data protection obligations not less protective than those in this DPA with respect to the protection of Customer Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor.

### **5.2 List of Current Sub-processors and Notification of New Sub-processors.**

Atomic Jolt shall make available to Customer the current list of Sub-processors for the Services. A current list of Sub-processors for the Services, including the identities of those Sub-processors and their country of location, is accessible via <https://www.atomicjolt.com/legal/sub-processors>. Where a Sub-processor is proposed to be changed Atomic Jolt shall provide prior notice by email or other permissible notice under the Agreement to Customer before implementing such change.

## **6. SECURITY**

### **6.1 Controls for the Protection of Customer Personal Data.**

Atomic Jolt shall maintain appropriate technical and organizational measures for protection of the security and integrity of Customer Personal Data. Customer understands and agrees that the technical and organizational measures are subject to technical progress and development. In that regard, Atomic Jolt is expressly permitted to implement adequate alternative measures as long as the security level of the measures is maintained.

## **7. CUSTOMER DATA INCIDENT.**

Atomic Jolt will notify Customer without undue delay after becoming aware of any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Personal Data, transmitted, stored or otherwise processed by Atomic Jolt or its Sub-processors of which Atomic Jolt becomes aware (a "**Customer Data Incident**"). Atomic Jolt shall make reasonable efforts to identify the cause of such Customer Data Incident and take those steps as Atomic Jolt deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident to the extent the remediation is within Atomic Jolt's reasonable control. The obligations herein shall not apply to incidents that are caused by Customer or Customer's Users.

## **8. IMPACT ASSESSMENT.**

With effect from May 25, 2018, upon Customer's request, Atomic Jolt shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to Atomic Jolt. Atomic Jolt shall provide reasonable assistance to Customer in the cooperation or prior consultation with the supervisory authority, to the extent required under the GDPR.

## **9. RETURN AND DELETION OF CUSTOMER DATA**

Atomic Jolt shall return Customer Personal Data to Customer and, to the extent allowed by applicable law, delete Customer Personal Data, as required by the Data Protection Laws. Atomic Jolt shall not be required

to delete any Customer Personal Data to comply with a user's request directed by Atomic Jolt if it is necessary to maintain such information in accordance with Cal. Civ. Code 1798.105(d), in which case Atomic Jolt shall promptly inform Customer of the exceptions relied upon under 1798.105(d) and Atomic Jolt shall not use Customer Personal Data retained for any other purpose than provided for by that exception.

## **10. AUTHORIZED AFFILIATES**

### **10.1 Contractual Relationship.**

The parties acknowledge and agree that, by executing the Agreement, the Customer enters into the DPA on behalf of itself and, as applicable, in the name and on behalf of its Authorized Affiliates, thereby establishing a separate DPA between Atomic Jolt and each such Authorized Affiliate subject to the provisions of the Agreement and this Section 11 and Section 12. Each Authorized Affiliate agrees to be bound by the obligations under this DPA and, to the extent applicable, the Agreement. For the avoidance of doubt, an Authorized Affiliate is not and does not become a party to the Agreement, and is only a party to the DPA. All access to and use of the Services by Authorized Affiliates must comply with the terms and conditions of the Agreement and any violation of the terms and conditions of the Agreement by an Authorized Affiliate shall be deemed a violation by Customer.

### **10.2 Communication.**

The Customer that is the contracting party to the Agreement shall remain responsible for coordinating all communication with Atomic Jolt under this DPA and be entitled to make and receive any communication in relation to this DPA on behalf of its Authorized Affiliates.

### **10.3 Rights of Authorized Affiliates.**

Where an Authorized Affiliate becomes a party to the DPA with Atomic Jolt, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and seek remedies under this DPA, subject to the following:

**10.3.1** Except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against Atomic Jolt directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Agreement shall exercise any such right or seek any such remedy on behalf of the Authorized Affiliate, and (ii) the Customer that is the contracting party to the Agreement shall exercise any such rights under this DPA not separately for each Authorized Affiliate individually but in a combined manner for all of its Authorized Affiliates together (as set forth, for example, in Section 11.3.2, below).

**10.3.2** The parties agree that the Customer that is the contracting party to the Agreement shall, when carrying out an onsite audit of the procedures relevant to the protection of Customer Personal Data, take all reasonable measures to limit any impact on Atomic Jolt and its sub-Processors by combining, to the extent reasonably possible, several audit requests carried out on behalf of different Authorized Affiliates in one single audit.

## **11. LIMITATION OF LIABILITY**

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs between Authorized Affiliates and Atomic Jolt, whether in contract, tort or under any other theory of liability, is subject to the "Limitations of Liability" section of the Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Agreement and all DPAs together.

For the avoidance of doubt, Atomic Jolt's and its Affiliates' total liability for all claims from the Customer arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and all DPAs established under this DPA, including by Customer and all Authorized Affiliates, and, in particular, shall not be understood to apply individually and severally to Customer that is a contractual party to any such DPA.

## **12. EFFECT OF THIS DPA.**

If there is any conflict or inconsistency between the terms of this DPA and the remainder of the Agreement, the terms of this DPA will govern. Subject to the amendments in this DPA, the Agreement remains in full force and effect. Also, for the avoidance of doubt, each reference to the DPA in this DPA means this DPA including its Annexes.

## **13. CHANGES TO THIS DPA**

### **13.1 Changes to this DPA.**

From time to time, Atomic Jolt may change any URL referenced in this DPA and the content at any such URL. Atomic Jolt may change this DPA if the change: (a) is expressly permitted by this DPA; (b) reflects a change in the name or form of a legal entity; (c) is required to comply with applicable law, applicable regulation, a court order or guidance issued by a governmental regulator or agency; or (d) does not: (i) result in a degradation of the overall security of the Services; (ii) expand the scope of, or remove any restrictions on, Atomic Jolt's processing of Customer Personal Data; and (iii) otherwise have a material adverse impact on Customer's rights under this DPA, as reasonably determined by Atomic Jolt.

### **13.2 Notification of Changes.**

If Atomic Jolt intends to change this DPA under Section 14.1 (c) or (d), Atomic Jolt will inform Customer at least 30 days (or such shorter period as may be required to comply with applicable law, applicable regulation, a court order or guidance issued by a governmental regulator or agency) before the change will take effect by either: (a) sending an email to the Customer's notification email address; or (b) alerting Customer via the user interface for the Services. If Customer objects to any such change, Customer may terminate the Agreement by giving written notice to Atomic Jolt within 90 days of being informed by Atomic Jolt of the change.

## **ANNEX I**

This Annex must be completed and signed by the parties

### **Data exporter**

The data exporter is: Customer Name: \_\_\_\_\_

### **Data importer**

The data importer is: Atomic Jolt

Atomic Jolt helps institutions go beyond basic LMS tools by making learning more interactive, measurable, and engaging. From deeper assessments to real-time feedback, better content discovery, and meaningful student reflection, plus custom solutions built directly into the LMS, we give educators clearer insight and students a more active role in their learning. Atomic Jolt processes personal data upon the instruction of the data exporter in accordance with the terms of the Agreement.

### **Data subjects**

Data exporter may submit Customer Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to personal data relating to the following categories of data subjects:

- Prospects or customers of data exporter (Teachers and students, who are natural persons)
- Employees or contact persons of data exporter's prospects or customers
- Third parties with which the data exporter conducts business

### **Categories of data**

Data exporter may submit Customer Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of personal data:

- First and last name;
- Contact information (company, email, phone, address);
- IP address;
- Academic related information (scores);
- LMS/LTI user id

### **Special categories of data (if appropriate)**

Not applicable for our products

### **Processing operations**

The personal data transferred will be processed in accordance with the Agreement and may be subject to the following processing activities:

- storage and other processing necessary to provide, maintain and update the Services provided to the data exporter;
- to provide customer and technical support to the data exporter; and
- disclosures in accordance with the Agreement, as compelled by law.

The personal data is stored according to Atomic Jolt's Retention Policy and Schedule. Data may also be removed on request by an individual in the European Union.

Data importer will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Personal Data as set forth in Annex II of Atomic Jolt's Standard Contractual Clauses which are found at : <https://www.atomicjolt.com/legal/sccs>

DATA EXPORTER

Name:

Authorized Signature:

DATA IMPORTER

Name: Atomic Jolt

Authorized Signature:

DATA EXPORTER

Name:

Authorized Signature:

DATA IMPORTER

Name: Atomic Jolt

Authorized Signature: