

TERMS AND CONDITIONS OF SUBSCRIPTION AGREEMENT

1. License.

- a. **Grant.** Atomic Learning grants Customer a non-exclusive, nontransferable, limited license to access the Atomic Learning Library ("Library"), which consists of various databases, services, and remotely-accessed materials (collectively "Features") which may change from time to time. Atomic Learning, in its sole discretion, may restrict access to certain Features at any time.
- b. **Limitations.** Customer may only access the Library web site ("Website"):
 - (1) via hypertext transfer protocol (http);
 - (2) during the subscription term; and
 - (3) from the link within the Learning Place's Blackboard e-learn system.

Customer agrees not to copy, download, store, publish, transmit, transfer, sell or use any part of the information or data in the Library or on the Website ("Data") except as expressly permitted by this Agreement or with Atomic Learning's prior written consent. The Data may not be stored in an archival or other searchable database or quoted in Customer's work product. Customer may download Storyboard Pro, Video Story Telling guide, Teacher2Teacher materials, and customer support materials solely for use by those permitted to access the Library pursuant to this agreement.

- c. **Rights in Data.** Except for the license granted in this Agreement, all right, title and interest in the Data, in all languages, formats and media throughout the world, including all copyrights, are and will continue to be the property of Atomic Learning and/or the persons or entities which contribute the Data to Atomic Learning ("Contributors").

2. Responsibility for Access. Customer is responsible for all access to the Library and the Website by:

- (1) Customer and any individuals authorized on page one of this Agreement, whether at Customer's site or another location;
- (2) by means of Customer's equipment; and
- (3) by means of Customer's Library password, even if Customer did not authorize such use.

Customer agrees to defend and indemnify Atomic Learning from any claims or damages relating to our arising out of any access for which Customer is responsible.

- ### 3. Disclaimer of Warranties and Limitation of Liability. CUSTOMER ACCEPTS THE LIBRARY, THE DATA AND THE WEBSITE "AS IS," "WITH ALL FAULTS", AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS. TO THE EXTENT PERMITTED BY LAW, AND EXCEPT FOR INTENTIONAL ACTS OR GROSS NEGLIGENCE, CUSTOMER WAIVES ALL CLAIMS AGAINST ATOMIC LEARNING AND THE CONTRIBUTORS FOR ANY CLAIM(S) RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ITS PERFORMANCE, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT OR NEGLIGENCE. IN NO EVENT WILL ATOMIC LEARNING OR THE CONTRIBUTORS BE LIABLE TO CUSTOMER FOR ANY CLAIM(S) RELATING TO CUSTOMER'S INABILITY OR FAILURE TO PERFORM TRAINING OR OTHER WORK PROPERLY OR COMPLETELY EVEN IF ASSISTED BY ATOMIC LEARNING. CUSTOMER FURTHER WAIVES ANY CLAIMS AGAINST ATOMIC LEARNING AND THE CONTRIBUTORS FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, REGARDLESS OF THE FORESEEABILITY OF SUCH DAMAGES.

4. **Terms and Termination.** This Agreement may be terminated prior to its expiration only as follows:
- (1) immediately by either party if the other party has materially breached this Agreement, upon which no refund of the Subscription Fees is due;
 - (2) information provided in this Agreement is false or fraudulent; or
 - (3) by Customer if Customer is dissatisfied with the Data or the Website, but only if Customer provides Atomic Learning written notice within 60 days of Customer's signature above. Upon receipt of such notice, Atomic Learning will provide Customer with a prorated refund of any paid Subscription Fee within 60 days.
- The provisions of this Agreement which by their nature are intended to survive termination or expiration of this Agreement shall survive expiration or termination of this Agreement, including without limitation the obligations and limitations set forth in sections 2, 3, 5, 6-9.
5. **Governing Law and Venue.** This agreement is made in and shall be governed by and construed in accordance with the laws of the State of Minnesota without reference to choice of law principles. Customer consents to exclusive jurisdiction and venue of the courts of Morrison County, Minnesota, U.S.A.
6. **Time Limitation on Claims.** Except for claims by Atomic Learning relating to improper use of the Library or Data, no claim, regardless of form, which in any way arises out of this Agreement or the use of or inability to use the Library or Data may be made, nor action based upon such claim brought, by either party more than one year after the basis for the claim becomes known to the party asserting it.
7. **Export Laws.** The Library, Data, the Website and related technology and documentation may not be exported or re-exported in violation of the U.S. Export Administration Act and its implementing regulations.
8. **Entire Agreement, No Additional Terms.** This is the entire Agreement between the parties with respect to its subject matter and supersedes all prior agreements. Unless expressly accepted by Atomic Learning in writing, no other terms and conditions in conflict or in addition to those stated herein are binding on Atomic Learning, including without limitation any terms and conditions contained in any of Customer's purchase orders or other documentation.
9. **Other Provisions.** Neither this Agreement nor any part may be assigned, sublicensed or otherwise transferred by Customer without Atomic Learning's prior written consent.
- This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the parties.
 - If any provision of this Agreement is found to be void, invalid, unenforceable or illegal, the validity and enforceability of the other provisions will not be affected and any unenforceable provision shall be modified and interpreted so as to best accomplish the intent of such provision.
 - Neither party shall be deemed to be liable for any provisions under this Agreement for failures in performance resulting from acts or events beyond the reasonable control of the party including, but not limited to, delays in transportation, storms or extreme weather conditions, fire, explosion, flood, strike, riot, or unavailability of communications, power, or telephone lines, supplies, or service, delay in delivery, failure or malfunction of equipment or of software, or similar catastrophe, or other acts of God.
 - Failure to enforce any provision of this Agreement is not a waiver of the provision or of the right to enforce the provision later.
 - The headings and captions are inserted for convenience only and do not constitute a part of the Agreement.
 - This Agreement may be signed in counterpart.
10. **Dissemination of user information.** Atomic Learning will not share or sell personal customer information.