

Estimate # 210621-26844

Date: **2021-06-21**

**Boom Learning (a dba of Omega Labs Inc.)**

9805 NE 116th St STE #7198

Kirkland, WA 98034



EIN: 45-5602422

DUNS: 06-765-6689

A WA State C Corporation

📞 1+ 833 WOW BOOM (969-2666)

✉ sales@boomlearning.com

🌐 <http://wow.boomlearning.com>

**Bill To:**

Ockerman Elementary School

Boone County Schools

8250 US HWY 42

FLORENCE , KY 41042

United States

Item	Quantity	Rate	Amount
Memberships (Annual charge for data reporting)	Up to 27 teachers Up to 600 students	\$900.00	\$900.00
Renewing Package: 2,000 points	27	\$20	\$540.00

**Payment Due. Thank you for your  
business.**

Membership Amount \$900.00

**Membership Subtotal** \$900.00

Points Amount \$540.00

Points Discount - \$10.80

**Points Subtotal** \$529.20

Subtotal \$1,429.20

**Grand Total: \$1,429.20**

## Memberships

School membership pricing is based on the combination of teachers and student seat licenses needed. If you did not include a student number, we calculate a student seat quantity based on the number of seats purchased divided by our per student price. You will be asked to purchase more seats if you exceed this number. Each account in a school can serve up to the total number of students licensed. Please note that some specialists may need multiple accounts if they serve more than 17 classes or 700 students.<sup>i</sup> Each teacher must have their own account.

## Points

Points are one-time charges for digital access credits redeemed for Boom Cards decks (curriculum) or for fonts, images and other tools to make your own Boom Cards decks. Points do not expire. Points can be transferred between teacher/provider accounts owned by organization.

# Boom Learning News

teaching made easy

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## Terms of Service

Effective October 15, 2020 (see [archived versions](#)) see also our [Privacy Policy](#)

THIS IS A BINDING AGREEMENT. IT CONTAINS A BINDING ARBITRATION PROVISION AND A WAIVER OF CLASS ACTION RIGHTS THAT AFFECTS YOUR LEGAL RIGHTS. EITHER YOU OR WE MAY ENFORCE THIS AGREEMENT. GOVERNMENT ENTITIES MAY SIGN A TERMS ADDENDUM (PROVIDED BELOW) TO REJECT THE ARBITRATION CLAUSE.

By using Boom Learning, you are agreeing to the terms and conditions in this document and the terms in our [Privacy Policy](#) (collectively the “**terms**”). If there is a conflict between these Terms of Service and our [Privacy Policy](#), the [Privacy Policy](#) will control. If you provide Purchase Order Terms and Conditions that conflict with the terms, conflicting terms are rejected. If you do not accept all the terms, do not use Boom Learning. “**You**” means the adult educator who creates an account with us. We are a service provider acting on your behalf to process data for your educational purposes.

We will not make material changes to the terms without first providing notice via our newsletter service (ActiveCampaign). Mere reorganization of components between cross-referenced documents nor the addition of detail previously stated in our FAQs that does not alter fundamental commitments does not constitute a material change.

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## A. Terms for All

### A.1. Who we are and how to reach us

We (also “our” and “us”) are Omega Labs Inc. dba Boom Learning, and our successors, assigns, and subsidiaries. Legal notices must be sent to 9805 NE 116th St Suite 7198, Kirkland WA 98034 or [legal@boomlearning.com](mailto:legal@boomlearning.com).

### A.2. What we are

## Boom Learning

- is a platform at [wow.boomlearning.com](https://www.wow.boomlearning.com) for creating interactive, self-grading teaching resources (“**Boom Cards**”), including the ability to incorporate “**assets**”, such as images, artwork, fonts, video, and sound, into those Boom Cards, (the creation platform is called the “**Studio**”),
- offers tools for selling and sharing Boom Cards on other marketplaces (“**External Marketplaces**”),
- includes a marketplace for selling and sharing Boom Cards and assets (the “**Store**”),
- provides educator tools for managing and assigning Boom Cards (“**Classes**”) and reviewing student performance (“**Reports**”),
- offers web apps (<https://boom.cards>) and native apps ([Amazon](#), the [App Store](#), and [Google Play](#)) for playing Boom Cards. Mobile apps are also subject to the rules and agreements of their respective app stores.

## A.3. In case we break up and can't solve our differences on our own, you agree we will use ARBITRATION

A.3.1 So if we have a falling out, before calling in the big guns (aka arbitration), you and we shall attempt in good faith to resolve all disputes by negotiation between representatives with the authority to settle the controversy. If negotiations do not resolve the matter, and if the total amount in controversy is less than \$100,000, the matter will proceed to mediation to be conducted online through JAMSconnect. If mediation is unsuccessful in resolving the dispute or the matter has a total value greater than \$100,000, then you and we will proceed to the arbitration procedures in the next paragraph.

A.3.2 If we get to the stage of arbitration, **any** dispute, controversy or claim, arising out of or relating to these terms or to your purchase or use of Boom Cards or Boom Learning will be referred to and finally determined by arbitration administered by JAMS in King County, Washington, in accordance with JAMS’ Streamlined Arbitration Rules and Procedures or, if you are situated outside of the United States, in accordance with JAMS International Arbitration Rules. By **any**, we really mean any, include disputes over whether we even formed an agreement, how to interpret our agreement, whether or how there was a breach, whether or how there was a termination, and even whether or not claims are arbitrable.

A.3.3. You and we agree that the laws applied will be the laws of the State of Washington. Schools keep reading, there are exceptions for you in the Schools portion of these Terms.

A.3.4 You and we further agree that arbitration must be on an individual basis. **This means neither you nor we may join or consolidate claims in arbitration by or against other purchasers or users of Boom Learning, or litigate in court or arbitrate any claims as a representative or member of a class.**

A.3.5 Finally, you and we agree that any arbitration initiated hereunder must be brought no later than one hundred and eighty (180) days after the dispute first arose, unless the matter qualifies for mediation, as described above, in which case the initiation of a mediation shall toll this limitations period from the date of initiation through the date of the completion of the mediation.

## A.4. Talking about Boom Cards and Boom Learning

Please talk about Boom Cards. Be sure to give credit where credit is due. Don't claim as your own things that are not. If you post an image of Boom Learning or Boom Cards to any social media site available to the public, you grant Boom Learning and/or the author permission to repost that image with appropriate credit to you.

In the event you provide us or an author with suggestions, ideas or other feedback, we or the author will be free to use that feedback in any manner without restriction and without owing you money or compensation. Ratings you give must be based on using the resource for its intended purpose.

Boom Learning names and logos are the trademarks, trade names and/or service marks of Boom Learning. Our authors' names and logos are the trademarks, trade names and/or service marks of our authors. You may use our names descriptively in reviews. [Use of Boom Learning and Boom Cards names and logos must comply with our guidelines](#). For all other uses, ask for written permission from us or our authors first.

#### **A.5. You promise that you are an adult and you will comply with rules for interacting with minors.**

When you accept these terms, you represent and agree that you are an adult and are not a minor. Boom Learning is a platform marketed and directed to adult users for use with students, who may be minors. Adults create accounts for students under their charge. See our [Privacy Policy](#) for rules regarding your use of Boom Learning with minors.

#### **A.6. You agree that we can verify what you tell us.**

You authorize us, directly or through third parties, to make any inquiries we consider appropriate to verify account information you provide, including your authorization to agree to the terms or your identity.

#### **A.7. Authorizations and account ownership**

You represent and warrant that you have permission and authorization, as required by law or policy, from your school and affected parents, guardians, and students, to bind students and your school to the terms. If you purchase an account with out-of-pocket funds for use at a school with students, Boom Learning agrees that the school is a beneficiary of the terms. If you are a school, government, business or other entity, a person associated with your account must have authority to bind the entity to this Agreement.

We use a first purchaser rule to determine account ownership. If a teacher buys the account, it belongs to the teacher for his or her lifetime and cannot be transferred to another individual. If a school buys an account, it belongs to the school and can be transferred to another teacher at that school. Teachers who change schools must delete student records relating to the prior school.

#### **A.8. You pay all applicable charges.**

Prices exclude taxes and currency exchange settlements unless stated otherwise. You are responsible for paying taxes or other charges. If your account is canceled, you are obligated to pay all charges made to your account before the cancellation was effective. Failure to provide valid payment may result in you being banned. Being banned does not absolve you of responsibility for amounts in arrears.

#### **A.9. We provide electronic receipts, invoices, and statements. You have 180 days to tell us about mistakes.**

We provide you with electronic receipts, invoices, and statements. You will receive email receipts from the payment processor you selected. You can find a record of your purchases in [My Settings](#). These are the only receipts, invoices, and statements we provide. It is your responsibility to print or save copies for your records. If we make an error on a receipt, you must report the mistake to us within 180 days after the error appeared. If you do not inform us within 180 days, you agree that you release us from all claims of liability and loss resulting from the error and that we will not be required to correct the error or provide a refund.

#### A.10. Our acceptable use policy (you knew we'd have one).

Failure to conform to these acceptable uses can result in your account being suspended or locked out. It will also result in refunds being issued for materials that cannot be repaired. You will

- only disclose the private information of others that you have a right to disclose and to authorized persons;
- only incorporate the intellectual property of others into materials you make or sell items with permission;
- give credit where you are required to give credit;
- comply with all applicable laws that apply;
- access Boom Learning only through pages we make publicly available using your authorized login credentials;
- ensure messages and electronic instructions delivered to us do not include malicious code or otherwise attack our systems;
- create, select, share and deliver to students materials that distinguish fact from opinion;
- never include any material that contains advertising or marketing content in materials intended for delivery to K-12 students;
- review all materials created, selected, shared and delivered to students to ensure they do not contain materials that biased, offensive, inappropriate, hateful, indecent, harassing or unlawful, considered in light of the age of the students who are the intended users of the materials (as judged solely by us).

Do not engage in any conduct in any forum hosted by Boom Learning that is harassing, threatening, fraudulent, inappropriate, hateful, pornographic, defamatory, obscene, offensive, indecent or unlawful (as judged by solely by us).

*Bad choices have consequences:* We do not have an obligation to monitor our sites and apps, but we do have a right to do so. We proactively edit and depublish Boom Cards that violate our acceptable use policy. We reserve the right to remove content, suspend you, ban you, or pursue other remedies against you at our sole discretion, any time, for any breach of the terms of this acceptable use policy or of this agreement, without notice. We reserve the right to provide information to third parties, such as our authors, schools, law enforcement, supervisory authorities, and attorneys general, to enable them to pursue legal remedies against you. You agree that we will not be liable to you or any third party for any suspension or termination of your account. There are no refunds when an account is suspended or terminated and you will forfeit your current membership. If we terminate your account, you will not establish a new account without our permission. You will be required to pay anew to reopen an account.

#### A.11. You can report infringement of copyrights and we will take action.

The Digital Millennium Copyright Act provides specific guidelines for reporting infringement of your COPYRIGHTS to us. It also defines what we do when we receive a complaint from you. Copyrights are rights to prevent others from copying,

displaying, performing, distributing, or making a variation of a work of original expression created by you and captured in some form by you. If you believe your copyrights have been violated, tell us using our [Notice and Procedure for Making Claims of Copyright Infringement](#). We will remove items that we have a good faith belief we have a legal right and obligation to remove.

If you want to contact us about abuse of our acceptable use policy, trademark infringement or other matters, do not send a DMCA notice. Send a proper message providing sufficient information for us to identify your concern and an actionable requested remedy to [legal@boomlearning.com](mailto:legal@boomlearning.com). If you add patent or trademark claims to your DMCA notice we will reject it as nonconforming and will require you to submit again. We prefer a less formal, more flexible approach than the DMCA to arriving at a mutually agreeable messaging to give to teachers about acceptable use of your materials, but if you must use the DMCA, we expect you to get it right.

## A.12. We can't make everyone behave all the time.

Before assigning any material, you should inspect it for suitability. If upon inspection it does not conform to your expectations, you may request a refund by identifying the deck title, deck author, and a brief statement of the issue with the deck. Refund requests must be within reasonable proximity of the purchase date. We will grant reasonable refund requests, but reserve the right to refuse for customers who abuse the process, as determined in our sole discretion.

You will see content on Boom Learning that was posted by our authors and third parties. Those third parties are solely responsible for the content they make available. You may object to content and we will determine, in our sole discretion, if it should be removed. We are not responsible for the accuracy, appropriateness, lawfulness or truthfulness of any author or third party content. We are not liable to you if you rely on author or third-party content or if you suffer damage from an author or third party. We are not liable even if you object to us about the content and we take no action. We will respond to a properly issued court order to remove content.

## B. Terms for Buyers of Boom Cards

### B.1. What you can do with Boom Cards

If you have a current account (either free or a paid membership) you can

- Redeem them.
- Assign them to your students. Fastplay Pins are available for all accounts. Other methods require a paid membership.
- Display and perform with your students or demonstrate them to others associated with your school.
- Set Custom Play settings for Hyperplay and assigned decks.
- Give feedback, rate them, and contact the author.
- Print them for your students.
- Create them (subject to limits based on your account tier).
- Share or transfer ones you've created with your team.

### B.2. Modifications

Boom Cards are owned by their authors. You receive a right to use them. Authors reserve the right to modify Boom Cards after purchase to correct errors and omissions.

### **B.3. What you can't do with Boom Cards.**

You can't use them offline; they require a connection to the internet (wired, wireless, or cellular). You may not extract or attempt to extract images, fonts, video, sound or other elements from Boom Cards using any means. Attempting to do so can result in you being banned from our system and/or subject to civil or criminal action against you. You cannot export Boom Cards decks. You may not share purchase Boom Cards with others through account sharing or other methods. You may not share decks or bundles that you purchased with other users without additional licenses. If we catch you doing it we will require you to make the sellers whole financially or forfeit your account, including all decks therein. Don't steal from fellow teachers. You may not use them for a commercial purpose without the author's consent.

### **B.4. Points—what and why**

Points are pseudocurrency purchased with US dollars. We use them for assets and Boom Cards purchases from Boom Learning. They enable transactions that would otherwise be cost prohibitive for us to provide. If you have insufficient points in your account to check out products you will be prompted to purchase points first. You will then go back and check out the products.

Points do not expire but can be forfeited. Purchased points are refundable upon request if they have not been spent to redeem Boom Cards and the account has not been deleted. If you delete an account or we delete a stale account that is no longer being used and the account has points in it at the time of deletion, all points are forfeit. Please read our [Privacy Policy](#) for when we delete stale accounts. We reserve the right to discontinue the availability of points at any time. If we suspect fraud or abuse regarding your points, we may cancel, suspend, or limit your ability to redeem points. We delete points we determine were obtained fraudulently. We may charge you for the value you obtain by fraudulently using points. You may not have more than 100,000 unused points in your account at any time.

### **B.5. All sales are final.** You may be charged back dispute fees.

Unless otherwise provided, all purchases and redemptions are final and nonrefundable. We may, at our sole discretion issue refunds, such as for duplicate purchases. Our decision to issue a refund for a particular customer does not obligate us to reverse redemptions to any other customer or for any other product. If we cancel or suspend your account, your right to acquire and use products stops immediately. We can only issue refunds for purchases made directly from Boom Learning. Direct all other refund requests to the site from which you made the purchase.

If you dispute a charge without requesting a refund first, we reserve the right to charge you the dispute fee, which can be \$15 to \$20 per dispute. Users who abuse the dispute process will be locked out of their accounts. When a charge is disputed, we will reclaim the purchased items (refunding decks, removing points and expiring items). If the dispute was not valid (for example you spent the points or continued using the membership) but is nonetheless resolved against us, you will be required to pay the dispute charge before you can continue using your account. If the dispute is valid because you used a payment you were not authorized to use, you will be required to pay the dispute fees to regain access to your account.

## **C. Terms for Users of Boom Learning (Studio, Classes, Reports and more)**

## C.1. Accounts and memberships

You must have an account to use Boom Cards. Boom Cards require a connection to the internet. There are free accounts and paid member accounts. All memberships are annual, pre-paid and non-refundable. Free accounts allow you to play purchased Boom Cards using Fastplay Pins. Paid member accounts allow you a number of benefits, including the ability to track student progress based on the number of seats you purchased, create your own Boom Cards, and get special discounts. Boom Learning reserves the right to change to terms of memberships at any time in our discretion. Changes will take effect for you on renewal.

## C.2. Renewals (automatic and otherwise)

**You agree that we may automatically extend or renew your account as specified below unless you downgrade your membership or request a refund of unused purchased points prior to the renewal date.**

Renewals work this way

- We will send you by email a notice that your account is expiring if you have a membership (whether paid or granted as a free promotion). We will explain how to downgrade your membership in that notice.
- The notice will state that any unused points you have will be automatically applied by us to extend your membership on a pro-rata basis upon expiration.
- If you are subject to extension by having a points balance, to avoid points expenditure you must go to [My Settings](#) before the expiration date and downgrade your membership to a free tier.
- We renew your account from the date it **expired**, not the date of the renewal. There are costs to maintaining your account even if you are not actively using it.

## C.3. Upgrades, downgrades, and refunds

Downgrades and upgrades are immediate. Membership purchases are non-refundable except at our sole discretion (such as you accidentally opening and purchasing 2 accounts). Renewals are from your expiration date.

## C.4. Account deletion and closure

**DELETION IS IRREVERSIBLE. AGAIN DELETION IS NOT REVERSIBLE.**

If you have unspent purchased points you must request a refund before deleting your account (or before we delete it automatically as a stale account). Once an account is deleted, points are forfeit and non-refundable.

You may add and delete students. When you delete a student, you delete the record of that student's past work. To protect student privacy, we take you at your word when you issue a deletion instruction.

To minimize privacy risk, **we delete stale accounts according to the [schedule](#) in our Privacy Policy**. A teacher who deletes a school purchased account without the permission of the school is liable to the school for the loss. Schools may authorize us or a teacher to delete a school-purchased account. We may, in our discretion, close or suspend your account at any time for any reason, with or without notice. You may close your account using Delete from [My Settings](#) at any time, without notice to us. Account closure is permanent and irreversible – decks created but not purchased are permanently destroyed.

## C.5. Account sharing is not allowed

Accounts are 1 teacher/classroom = 1 account. Our authors license materials for 1 teacher and his or her students. Only job-share teachers may share an account. To be allowed to share an account you must send an application to [help@boomlearning.com](mailto:help@boomlearning.com) with the account id to be shared, the names and email addresses of the teachers sharing, and a contact email for the account owner.

Fastplay pins allow you to interact with an unlimited number of students, but Fastplay pins expire and must be regenerated. All other assignment methods are allowed for you and the number of your students that your account tier allows. We may modify the number of students a tier is allowed at any time, at our sole discretion.

## C.6. Referrals, rewards, and special offers

From time to time, we offer paid referrals and/or other special offers. We do not disclose who clicked a referral link to the referring party. You can find our terms for any current offers [here](#). We are not obligated to offer rewards, referral fees, or any other special offer. We can change or discontinue any referral, reward, or special offer program at any time, at our sole discretion. In the absence of a specific offer, you should understand that we have no obligation to compensate you for giving a review, referring a customer, or otherwise spreading the word.

## C.7. Using “assets” (you know: images, fonts, sounds, videos, gifs and more) to make Boom Cards

Use assets you made yourself or that you have permission to use. You can purchase assets for use from the Boom Store (see C.2). You can also purchase them from a variety of other locations. If you do so, make sure that your permission allows use with Boom Cards. We take steps to prevent right click saving of images, so many artists will say “yes” that would otherwise say “no” to digital use. For your convenience, we keep [a list](#) of people who have said “yes” to Boom Cards use. Don’t use images of living people unless you have their permission (a right of publicity clearance). For dead people who have been dead less than 70 years, the question gets more complicated and you should contact an attorney for guidance.

We reserve the right to block you from accessing assets you upload, use or purchase, if we determine that you may not lawfully use the asset. We, in our sole discretion, will determine whether you are entitled to a refund for assets you purchased from an author on Boom Learning.

## C.8. Assets purchased from the Boom Store

When you buy assets from the Boom Store, you get permission to include those assets in decks you create and to use assets included in decks with your students. You may modify assets to the extent allowed by the tools included in the Boom Learning platform. Asset authors may provide more generous terms to you. If so, their terms apply.

## C.9. Parents

Parents and legal guardians may review student accounts owned by a school from the student log in. Parents must contact the teacher for a password reset for a student account, to correct an error in a student record, or to request an export of student performance records. We must have authorization from the Educator or a legal authority to fulfill parent requests. Please see our [Privacy Policy](#).

## F. Terms for Schools

## F.1. We are FERPA compliant.

We are Family Education Rights and Privacy Act (FERPA) compliant. Please see our [Privacy Policy](#). Boom Learning does not require student personally identifiable information to serve its educational purpose.

## F.2. Choice of law and arbitration exception for schools that are government or public entities

If you are a government or public entity required by law to use the laws of your state for choice of law, to reject arbitration, or to select local venue, please complete and return the Terms Addendum (below).

## F.3. Purchase orders

You [may use purchase orders](#) to buy points and memberships. Minimum purchase requirements apply. Terms and conditions are rejected to the extent they conflict with or supersede these terms. All additional discount terms over those in the estimate are rejected. Net payment terms on purchase orders are accepted. Failure to pay the invoice for memberships shall result in downgrading of the memberships and removal of points. Where users already have accounts with time remaining on them and a school purchases a membership for that account, we will credit the difference either in days or points, in our sole discretion.

## F.4. Data is stored in the United States. We are GDPR compliant.

Please see our [Privacy Policy](#) for details for European Economic Area, Swiss, UK, and Canadian customers.

## F.5. Account ownership

If a school purchases an account, the school owns the account and is agreeing to these terms. School accounts belong to the classroom for which they were purchased. Schools may transfer accounts they purchase between teachers if a teacher changes level, leaves the school, or goes on leave. The school may gift an account to a teacher. A teacher who purchased Boom Cards in a school account is making a gift of those Boom Cards to the school.

Schools can pay for memberships and points in teacher accounts, but doing so will not change the ownership of the account. If a teacher previously purchased an account with out-of-pocket funds and the school purchases an extended or upgraded membership for that teacher, account ownership will be deemed to remain with the teacher and is not transferred to the school. Likewise, points purchased by a school for use in an account originally purchased by the teacher shall be deemed to be owned by the teacher. Classroom licenses can only be used by one teacher at a time. Each teacher must have his or her own account.

Any attempt to seize or transfer ownership inconsistent with this section shall be null and void unless supported by a notarized statement signed by both parties stating the correct ownership of the account or a court or arbitral order.

## F.6. Use of school images or likenesses

Boom Learning agrees that, absent the school's prior written consent, it will not have any rights to (a) use any image or likeness of a school, including logos, emblems, or trademarks or (b) advertise or claim that the school endorses Boom Learning's services. Boom Learning may use Educator as a business reference.

## F.7. Service levels

Schools are provided the same service levels as non-school customers. Included in your purchase are free remote support, including e-learning, and professional development presentations support materials. Upon request and for a fee, we can provide on-site professional development training or remote professional development webinars.

## F.8. Security and Breach Response

Details are in our [Privacy Policy](#).

## S. Terms for Sellers of Boom Cards

You agree that you are accepting these terms for yourself and your business entity, if any. You must purchase a membership with public publishing rights to become a seller. All information you provide in your author profile is public information. You may set a price of free or a price in points for each item.

### S.1. Licenses you grant Boom Learning customers

If you sell assets, you grant all necessary rights for users to incorporate assets into Boom Cards for creation, student playback, printing and print use, display and performance to students, and marketing of Boom Cards created with the assets. For Boom Cards you create, you grant all necessary rights for users to print, assign, play, display and perform Boom Cards with their students and in their educational context, including displays to administrators, parents, and others as required by the educational setting. The rights you grant are perpetual, irrevocable and worldwide. You may provide your customers with more generous terms by including those terms in the product description and in any other location we make available for you to do so. If you provide a bundle, and your terms for items in the bundle are not identical, the most generous terms will apply. You promise you have read Sections A.7, C.5, and F.6 and agree to license to accounts as described therein. We may modify the number of students an account or tier is allowed, at any time and in our sole discretion.

### S.2. Licenses you grant to Boom Learning

You grant us a perpetual, worldwide, non-exclusive right and license to distribute your products to customers through Boom Learning. Your grant gives us the right to make modifications necessary to conform to Boom Learning acceptable use policies and system requirements, including conversions, corrections, resizing and reformatting. You agree that in the course of correcting errors, maintaining site integrity, or providing customer assistance that we may modify your products. You acknowledge that errors or reductions in quality may occur when we do so. Your sole remedy is to correct it yourself or to withdraw the product, and if appropriate resubmit an acceptable version. For products, you may revoke our license to distribute the product to new customers by withdrawing the product from the store. Once a product has been purchased, you may not revoke your customers' rights to continue to use it nor may you revoke our right to continue to store and serve it to your customers who purchased it. You grant us a worldwide, non-exclusive, irrevocable, perpetual right to maintain and distribute copies of your products to support customers who have purchased them.

### S.3. Ownership

Subject to the licenses you grant us and your customers and their students, you retain all ownership rights in and to your products. We own all proprietary rights in and to Boom Learning, obviously excluding you and our suppliers' products. You are solely responsible for accounting to and paying any of your co-owners or licensors amounts due to them.

## S.4. Clearances, repairs, refunds, and removal of a product from the store (including account closure)

You will obtain all licenses and clearances needed to grant the rights you grant at your own expense. We respect intellectual property and privacy rights and will remove infringing items. If any Boom Cards deck created by you is purchased by a customer, and it contains an asset you cannot lawfully include, you must repair the deck. We may withhold monies owed to you while investigating claims made against you. If we determine you are in breach, we may choose to refund customers for products you sold in violation of these terms. If we issue refunds, we will recoup the refunds from any and all monies we owe to you and, if you have insufficient funds with us, bill you and suspend your account until you have paid us such amounts. You will remain responsible for all amounts due until paid in full.

Once a Boom Cards deck has been sold, you may only modify it to correct errors and omissions. You may remove a product from further sale or close your account, removing all items from further sale. Removal is usually effective within 48 hours and is subject to system latencies. We may fulfill customer orders placed prior to the removal becoming effective. Resources purchased by buyers remain accessible to the buyers who have previously purchased them.

## S.5. Marketing

You agree to allow users to use your name and product names in reviews. You agree that your name, avatar, photographic image, products, and product images may be used by Boom Learning to market Boom Cards and Boom Learning. You agree that Boom Learning may repost any blog, social media post, or other post you make as part of our efforts to promote your Boom Cards and/or Boom Learning, including making video recordings of your works, cropping, resizing, or similar modifications to create marketing materials, in any media now known or existing hereafter. You also grant us the right to use your store name, and image, to market Boom Learning and your products. You may revoke all or some of your grant to us contained in this paragraph by providing us a communication to [help@BoomLearning.com](mailto:help@BoomLearning.com) describing how you wish to limit this paragraph. Your revocation will only apply to new campaigns and materials arising after the date we receive the notice. Be aware that if you revoke this grant, we will not be able to include your materials in marketing campaigns and your sales may suffer. We have no obligation to market or promote your products or to continue doing so after have started to do so. We will not owe you any fees for marketing or promoting your products.

## S.6. Acceptable use and no advertising

In addition to the acceptable use terms that apply to all, sellers are held to a higher standard. We expect you to take pride in published decks and provide high-quality products. We serve the education market. Products must be appropriate to that market. They should be respectful of the rights of others. You may not serve advertisements to students.

## S.7. Special rules for video

When you embed a YouTube link, we set the link to “no cookie” to protect student privacy and avoid serving advertisements to students. You may not try to circumvent this setting. For Vimeo, you must have a premium Vimeo account so that your users do not see ads. You may not collect personally identifiable information from any user via a Vimeo link. You must turn off all marketing settings that collect information before including a Vimeo link in a deck. No videos may be included in a deck that are essentially advertisements unless the purpose of the deck is to educate about how advertising works. If we learn of a deck that is serving advertisements to students or attempting to collect personal information from students, we will depublish it and require you to offer refunds to purchasers. You may also be subject to civil liability if you attempt to collect personally identifiable information from the user without their consent.

## S.8. Sellers consent to receiving email news from us

You consent to us sending you emails relating to selling from time to time. This takes precedence over any directions you may have given us elsewhere. To revoke this permission, you must close your store.

## S.9. Where you may sell

You may list products on the Boom Learning store. You may list products on marketplaces other than Boom Learning (“**external marketplaces**”) provided that you (a) you use only the special URL provided to you for listing on a specific site (if you list on more than one site each site will have its own unique product URL), (b) pay a service fee for sales on other sites to cover technical and customer support expenses for serving your customers (see our [payment schedule](#) for a current list of service fees, (c) ensure that your listings contain the current required language from Boom Learning explaining what Boom Cards are, why accounts are required, and any promotional offer language (see [Selling on External Sites](#)), and (d) you or your external marketplace will handle all payment processing, including refunds and providing proof of purchase. You may not make any warranties concerning Boom Learning to your customers.

If you list on external sites and pay us a service fee for the redemption, we will (a) provide technical and customer support to you and your customers, (b) at our option make special promotional accounts available to customers new to Boom Learning, (c) credit your account and remove materials from an external buyer’s account upon proof from you that an item was refunded. When reconciling redemptions and sales be aware that the dates of each event for a customer may be days or months apart.

You may not resale memberships without the explicit consent of Boom Learning.

## S.10. No joint venture

We are not creating a joint venture, partnership or the relationship of principal and agent between us and neither of us shall have any obligation to the other for any losses, debts, or other obligations incurred by the other except as set forth in these terms. Boom Learning is not the employer of or and does not act as an agent for any seller.

## S.11. Taxes

We collect sales tax for sales made directly by Boom Learning. You are responsible for all other taxes that may be due and payable as a result of your sales, including taxes for sales on external marketplaces. We consider you a wholesaler for sales on Boom Learning. Where required by law, we may deduct or withhold any and all applicable taxes from your proceeds and the amount you receive, as reduced, will constitute payment in full. Upon [certain reporting conditions being triggered](#), we may require that you provide accurate taxpayer identification information before receiving further payments. You must provide us with your full address

## S.12. Payouts

All payouts are made in U.S. dollars. You must have a PayPal account to receive a payout unless you have contacted us to be placed on check status. Checks are only available for US customers. You bear the entire risk for the loss or theft of a check in the mail and fees associated with issuing a stop payment. Payouts are only made if you are not in breach of your obligations to us nor under investigation for breach. We are not responsible for payout delays or other complications arising from Paypal or check delivery. We issue payouts as set forth in our [Payouts and Service Fees](#), which may change

from time to time. If your account is closed, we may withhold payouts for three months after the date they would otherwise be payable to ensure our ability to offset any refunds or other charges.

### **S.13. Your proceeds are net after fees, taxes, and other charges.**

Your payout will be amounts earned from sales on the Boom Learning marketplace ([wow.boomlearning.com/Store](http://wow.boomlearning.com/Store)) minus amounts due to Boom Learning. You may owe amounts to Boom Learning for advertising supports, service fees for Boom Cards sold on other sites, renewals, points purchases and more. If you sold a bundle of Boom Cards and the buyer already had purchased, either from Boom Learning or from another site, portions of the bundle, the buyer will pay, and you will be owed, the “[complete my bundle](#)” payout, not the full bundle price, which may, in some cases, be (\$0) zero. See our [payment schedule](#) for the most current payout formula. If you owe us money at the end of a payment cycle you will be invoiced, net 60 days. Unpaid invoices may result in suspension of author accounts.

The start or stop time of free offers and point value changes you set are subject to system latencies and may not be effective immediately. You agree to accept payment at the points value the buyer was presented. You agree that services fees for external marketplaces will be assessed on the points value of the product redeemed at the time of redemption, which may vary from the date of purchase by days or months. Your payouts will be reduced by (1) any refunds issued on your products, (2) the fee PayPal charges us to make the payment to you, (3) amounts you owe us, and (4) your annual membership fee, if due for renewal. If you receive a payout in error, we may reverse or require the return of the payout. You agree to cooperate with us in our efforts to do so. We may reduce payouts owed to you to adjust for previous overpayments and may do so without notice.

## **Z. More terms for all that you should read.**

### **Z.1. You WARRANT AND REPRESENT that you have made good choices.**

You warrant and represent (1) that any and all information and products you provide to us are truthful, accurate, complete, current and in compliance with these terms; (2) that any email address you provide is yours and that you have not impersonated any person or used a username or password that you are not authorized to use; (3) that you are fully authorized to provide the products and to authorize us to provide the products to others; and (4) that your products, and any site to which your products link, (a) comply with all applicable laws and regulations, (b) do not infringe, misappropriate or otherwise violate any third party intellectual property right, (c) do not breach the rights of any person or entity, including, without limitation, rights of publicity or privacy, and are not defamatory, and (d) do not and will not result in consumer fraud (including being false or misleading), product liability, tort, breach of contract, injury, damage or harm of any kind to any person or entity, and (e) do not advertise to students.

### **Z.2. You agree to INDEMNIFY us against your poor choices.**

At our request, you will defend, hold harmless, and indemnify us and our directors, officers, employees, agents, affiliates and each of their successors from and against all third-party claims, actions, demands, proceedings, damages, costs and liabilities of any kind that arise out of or relate to (1) your products, (2) your use of Boom Learning or authors' products, (3) your violation of laws or applicable regulations, (4) your breach of your warranties, representations or obligations under this agreement, (5) your direct communications with others, including direct communications between customers and authors, and (6) other claims that arise out of your actions, products or use. We will be entitled, at our expense, to participate in the defense and settlement of the claim or action with counsel of our own choosing.

### Z.3. Everything is provided as is and subject to change without notice DISCLAIMER OF WARRANTIES.

Boom Learning, and the content/products found on Boom Learning, are provided “AS IS” and “AS AVAILABLE” without warranty of any kind, whether express or implied, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, title or non-infringement. The entire risk arising out of use or performance of Boom Learning products remains with you. No communication, whether oral or written, from us to you creates any warranty. We and our Authors may change, suspend or discontinue Boom Learning or any product at any time for any reason, with or without notice. If we discontinue services, your resources may not be available to you. You agree that neither we nor our Authors shall be liable to you or any third party if Boom Learning or any product is changed, suspended or discontinued.

### Z.4. Our liability to you is limited (LIMITATION OF LIABILITY).

We work hard to make sure our system is available, but there are a substantial number of factors beyond our control in providing the services, including browser updates, filtering software, school IT settings and more. As a result, we can't guarantee that any or all feature will always work or that Boom Learning will be continuously available to you or your students.

*We and our suppliers are not liable to you for any errors or inaccuracies you find in or on Boom Learning; any service, system, or process delays, latencies, failures or interruptions; or any actions you take in reliance on us, our suppliers, or the content. Our and our suppliers' liability to you is limited whether the harm to you was foreseeable or not. We and our suppliers are not liable to you for any special, exemplary, or punitive damages, including loss of data, revenue, and/or profits, costs, or expenses, including legal fees and expenses, regardless of the legal theory on which you claim liability is based, even if you have advised us or our supplier of the possibility of those damages.*

*Our and our suppliers' liability to you is limited to the amount actually paid by you to us, if any, for the product(s) at issue. If you are a supplier, we will not be liable to you for amounts in excess of proceeds due and payable by us to you for the six-month period preceding the claim. YOU AGREE THAT YOU ARE WAIVING CLAIMS THAT YOU MAY NOT KNOW OR SUSPECT YOU HAVE AT THE TIME YOU ENTER INTO THIS AGREEMENT. YOU AGREE TO SPECIFICALLY WAIVE ANY CLAIMS AS A CREDITOR YOU MAY HAVE THAT YOU DO NOT KNOW OR SUSPECT EXIST IN YOUR FAVOR. YOUR WAIVER AS A CREDITOR INCLUDES WAIVER OF CLAIMS THAT WOULD HAVE MATERIALLY AFFECTED HOW YOU WOULD SETTLE A MATTER IN WHICH WE ARE A DEBTOR TO YOU. You acknowledge and agree that we cannot ensure that either content or data will be protected from theft or misuse. We have no liability arising from a failure of any system or feature that limits the use of content or data.*

*Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.*

### Z.5. For your attorney (and all armchair attorneys)

Rather than burden our users with technical, exhaustive, and precise references to the various intellectual property and related rights necessary, we instruct all attorneys reading this to understand that all necessary rights to take the actions described that are not stated explicitly are implied. Boom Learning, along with products available on it, are licensed, not sold, and ongoing access requires a current account.

### Z.6. These terms will change over time, those changes apply to you.

We will notify you when changes are made to these Terms of Service. Nonetheless, you should periodically review the most up-to-date version. We may, in our sole discretion, modify or revise these Terms of Service, including the [Privacy Policy](#), at any time, and you agree to be bound by such modifications or revisions. If any term is held unlawful, void or unenforceable for any reason, it will be considered modified so that its purpose and the remaining terms can be lawfully enforced. Acceptance of the changed terms is a condition of continuing as a member. If you do not wish to accept the new or revised terms, you must cancel your membership and/or withdraw your products.

## Z.7. Just because we gave you a pass once doesn't mean we have to again

Our failure to act if you fail to comply with a term does not waive our right to act on any subsequent failure to comply or nor does it waive the term in question.

## Z.8. Going our separate ways

This agreement is effective from your acceptance until terminated by you or us in writing or electronically. You terminate by ceasing to use Boom Learning. Any terms that by their nature are intended to apply indefinitely continue to apply, including but not limited, perpetual licenses, ownership provisions, warranties, disclaimers, indemnities, and limitations of liability. Terms that are intended to survive for a period after termination shall also survive for the designated period (such as payout holdbacks for refunds).

## Z.9. Assigning rights to others

We may assign any rights we have under any agreement to any successor or purchaser of us or of our assets, to the extent permitted by law and provided that such successor or purchaser agrees to be bound by the terms. If you assign your rights or obligations to another party, you must give us written notice of the assignment no later than ten (10) business days following the assignment. This agreement is binding on and inures to the benefit of any successors and assigns.

## Z.10. If one of these terms falls down, they do not all fall down.

If the final judgment of a court or arbitrator declares any term invalid, void or unenforceable, then you and we agree to reduce the scope, duration, area or applicability of the term, to delete specific words or phrases, or to replace any invalid, void or unenforceable term with a term that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term.

## Z.11. English Language

It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.*

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