



## Issue Paper

**DATE:**

July 20, 2022

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve Fort Wright is seeking approval to purchase a subscription to Boom Learning for the 2022-23 school year.

**APPLICABLE BOARD POLICY:**

01.1 – Legal Status of the Board

**HISTORY/BACKGROUND:**

Fort Wright is seeking approval to purchase a Boom Learning subscription for the 2022-23 school year. Fort Wright is committed to the district 1:1 technology initiative to redefine teaching and learning possibilities utilizing technology for all students. Boom Learning is an interactive tool with interactive lessons, automatic grading, gamified for students, and offers real-time reports. Teachers can track student progress with automated grading and monitor their progress using real-time and post-assignment reports. This subscription will be used by various students in P-5 and monitored by student progress toward goals and proficiency.

**FISCAL/BUDGETARY IMPACT:**

ESSER for the amount of \$1,470

**RECOMMENDATION:**


Approval to purchase a subscription from Boom Learning for Fort Wright for the 2022-23 school year.

**CONTACT PERSON:**

Tina Wartman, Principal

  
Principal/Administrator

  
District Administrator

  
Superintendent

~~Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.~~

~~Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.~~



## Curriculum Licenses (non-recurring)

Everything in the Boom marketplace is marked in "**points**". Some items are free. To purchase premium lessons, "points" are exchanged for curriculum.

Membership includes advanced data-processing and reporting, but does not unlock access to premium content.

We have put together the following **points packages** to provide guidance about how your teachers might want to use Boom Cards. We recommend getting plenty of points for each teacher, but you can always buy more points later.

NOTE: Points packages accumulate points to the school/organization and may be distributed or reallocated to teachers as you see fit. If some teachers need to buy less content, their points can be given to teachers who wish to buy more content.

<b>Creator Package</b> for teachers mostly creating DIY lessons	<b>1,000 points</b> \$10 USD	3	↕	<b>3,000 points</b> \$30.00 USD
<b>Renewing Package</b> for teachers with an existing library	<b>2,000 points</b> \$20 USD	3	↕	<b>6,000 points</b> \$60.00 USD
<b>Newbie Package</b> for teachers building a new library	<b>3,000 points</b> \$30 USD	3	↕	<b>9,000 points</b> \$90.00 USD
<b>Differentiate Package</b> for teachers with multi-level students	<b>5,000 points</b> \$50 USD	3	↕	<b>15,000 points</b> \$150.00 USD
<b>Special Needs Package</b> for teachers serving individual learning plans	<b>10,000 points</b> \$100 USD	3	↕	<b>30,000 points</b> \$300.00 USD
<b>Library/Computer Lab Package</b> for specialists serving multiple classrooms	<b>20,000 points</b> \$200 USD	3	↕	<b>60,000 points</b> \$600.00 USD

Annual Membership:

**\$ 240.00**

Curriculum:

**\$ 1230 USD**

Total:

**\$ 1,470.00 USD**

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**THE KENTON COUNTY BOARD OF EDUCATION**  
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017  
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531  
WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)  
*Dr. Henry Webb, Superintendent of Schools*

## **VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION**

### **Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Omega Labs Inc. dba Boom Learning

Vendor Name

9805 NE 116th Street, Ste 7198, Kirkland, WA 98034

Vendor Address

833-WOW-BOOM

Vendor Telephone

legal@boomlearning.com

Vendor Email Address

  
Eric Oemig (Jul 18, 2022 16:33 PDT)

Signature by Vendor's Authorized Representative

Eric Oemig

Print Name

July 18, 2022

Date








# KCBOE Vendor Assurance

Final Audit Report

2022-07-18

Created:	2022-07-18
By:	Lillith Leonard (lillith@boomlearning.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABfZQP3i5V7DZmNg3q81sitDNReaoaOcs

## "KCBOE Vendor Assurance" History

-  Document created by Lillith Leonard (lillith@boomlearning.com)  
2022-07-18 - 11:31:34 PM GMT- IP address: 24.18.32.67
-  Document emailed to Eric Oemig (eric@boomlearning.com) for signature  
2022-07-18 - 11:32:07 PM GMT
-  Email viewed by Eric Oemig (eric@boomlearning.com)  
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-  Document e-signed by Eric Oemig (eric@boomlearning.com)  
Signature Date: 2022-07-18 - 11:33:45 PM GMT - Time Source: server- IP address: 50.35.76.192
-  Agreement completed.  
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Adobe Acrobat Sign

## Boom Learning Legal Documents



# Boom Learning Legal Documents

For a full list of legal documents including archives, visit Boom Learning Support.

Legal Documents Directory

External Copy of this Document

## Terms of Service

Effective Date July 1, 2021 ([see archived versions](#)); Renewed July 1, 2022

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# 1. This is a Binding Agreement!

By using Boom Learning, you are agreeing to these Terms of Service and the Privacy Notices applicable to you. You can find the applicable terms for you below.

IT CONTAINS A BINDING ARBITRATION PROVISION AND A WAIVER OF CLASS ACTION RIGHTS THAT AFFECT YOUR LEGAL RIGHTS. EITHER YOU OR WE MAY ENFORCE THIS AGREEMENT. GOVERNMENT ENTITIES MAY SIGN AN AGREEMENT TO REJECT THE ARBITRATION CLAUSE.

## 1.1 Find the terms that apply to you

The Notices and Terms are listed in the order of precedence. That means that if there is a conflict between the terms of one or more documents, the term in the document higher on the list (with the lower numeral) will prevail over the terms in the higher listed document.

### 1.1.1 Students

1. Benefit from our Student Privacy Notice
2. Student accounts are subsidiaries of Educator or Entity accounts.

### 1.1.2 Schools, Medical Providers, and Businesses purchasing as an "Entity" are bound by

1. Any separately signed Data Privacy Addendum or Agreement;
2. Any separately negotiated and signed Service Agreement, Software License, or Master Agreement;
3. The Boom Learning Privacy Notices;
4. The Boom Learning Terms of Service; and
5. Any School-provided Purchase Order Terms and Conditions.

### 1.1.3 Educators purchasing as an individual are bound by

1. The Entity terms if your district has an Entity agreement,
2. The Boom Learning Privacy Notices, and
3. The Boom Learning Terms of Service.

### 1.1.4 Public Publishing Authors (Sellers) are bound by

1. The Public Author Terms of Service,
2. The Boom Learning Privacy Notices, and
3. The Boom Learning Terms of Service.

If you do not accept all the terms, do not use Boom Learning.

## 1.2 Changes

We will not make material changes to the terms without first providing notice via our newsletter service. Mere reorganization of components between cross-referenced documents or the addition of detail previously stated in our FAQs that does not alter fundamental commitments does not constitute a material change. 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.

## **1.3. 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).

## **1.4 Who you are**

“You” means the adult Educator, Entity, or Public Author who creates an account with us. We are a service provider acting on your behalf to process data for your educational purposes. “Entity” includes schools, hospitals, therapy practices, and educational services businesses, whether for profit or non-profit, and includes sole proprietor businesses.

### ***1.4.1 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 Notice for rules regarding your use of Boom Learning with minors.

### ***1.4.2 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.

### ***1.4.3 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 an entity with students, Boom Learning agrees that the school is a beneficiary of the terms. If you are an entity, a person associated with your account must have authority to bind the entity to this Agreement.

## **1.5 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 Public Authors tools for selling and sharing Boom Cards on other marketplaces (“**External Marketplaces**”);
- includes a marketplace for obtaining and listing Boom Cards and assets (the “**Store**”);
- provides educator tools for managing and assigning Boom Cards (“**Classes**”) and reviewing student performance (“**Reports**”); and
- 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.

## 2. Dispute Resolution including ARBITRATION

### 2.1 Negotiations first

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.

### 2.2 Mediation or Copyright Claims Board second

If negotiations do not resolve the matter and the matter falls within the jurisdiction of the Copyright Claims Board, the matter will be referred to the Copyright Claims Board for resolution.

If negotiations do not resolve the matter and 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.

### 2.3 Arbitration and Class Action Waiver

Government Agencies can opt out of Arbitration, change choice of law, and change venue by completing and returning our Government Agency Terms of Service.

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

ARBITRATION RULES AND PROCEEDINGS, as you are directed by the JAMS Rules, in accordance with JAMS International Arbitration Rules. By any, we really mean any, including 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.

You and we agree that the laws applied will be the laws of the State of Washington. 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.

## **2.4 You and we have 180 calendar days to bring a dispute**

You and we agree that any arbitration initiated hereunder must be brought no later than one hundred and eighty (180) calendar days after the dispute first arose unless the matter qualifies for mediation as described above, in which case the initiation of mediation shall toll (in lay terms "pause the running of") the limitations period from the date of initiation of mediation through the date of the completion of the mediation.

# **3. Acceptable Use Policy**

## **3.1 Key acceptable use policy requirements**

Failure to conform to these acceptable uses can result in your account being suspended or locked out. If you have items in the public store, they may result in closure of your public store. You will

- only disclose the private information of others that you have a right to disclose and only to authorized persons;
- only incorporate the intellectual property of others into materials you make or sell 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 and that are factually accurate (supported by verifiable and substantial evidence);
- never include any material that contains advertising or marketing content in materials you create that are intended for delivery to K-12 students; and
- review all materials created, selected, shared, and delivered to students to ensure they do not contain materials that are 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).

## 3.2 Bad choices have consequences

We do not have an obligation to monitor our sites and apps, but we 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.

## 3.3 Special rules for video

You may not embed any video in a Boom Cards deck that contains an advertisement. You are responsible for watching videos in full before embedding and ensuring that no advertisements are displayed. You are responsible for updating your videos if your hosting service changes its rules to add advertisements to your video. 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.

## 3.4 Be sure you are allowed to share and have the correct rights before sharing

Creating Boom Cards for use with your own classroom is typically a personal use and subject to fair use rules applying to teachers. However, sharing with colleagues, whether one-to-one or using Publish to School will in many cases be considered a commercial use subject to lowered or non-existent fair use protection. We reserve the right to require you to provide proof of a license for any element of a Boom Cards deck shared with colleagues using any method. We have the right, exercised by us in our sole discretion, to modify, delete, or unpublish items for which you do not have sufficient rights to share any element of the shared deck. All items Published to the Store are subject to the [Public Author Terms of Service](#).

## 3.5 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.



You can also report abuse or infringement informally by clicking Reviews and Report for the Boom Cards deck at issue. If you want to contact us about abuse of our acceptable use policy, trademark infringement, or other matters, do not send a DMCA notice. Instead, use the Report tool for the deck (found in the Reviews tab) or 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 message to give to teachers about acceptable use of your materials, but if you must use the DMCA, we expect you to get it right.

### **3.6 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, whether 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.

## **4. Talking about each other**

### **4.1 Chat us up, with credit**

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.

### **4.2 Feedback and ratings**

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.

### **4.3 Boom learning names and logos**

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.

## **4.4 Entity images or likenesses**

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

## **4.5 Social reposting**

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. This includes posts by entities.

# **5. Payments, fees, renewals, and the like (all are in USD)**

## **5.1 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.

## **5.2 We provide electronic receipts, invoices, and statements in USD**

All monetary amounts are denominated in US dollars ("USD"), and we expect payment in USD funds. 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.

## **5.3 You have 180 days to tell us we made a mistake**

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.

## **5.4 Purchase orders**

## 5.4 Purchase Orders

You may use purchase orders to buy points and memberships only through our Estimate Builder. Minimum purchase requirements apply. Terms and conditions in a Purchase Order are rejected to the extent they conflict with or supersede other applicable terms as stated in Paragraph 1.1.2. All additional discount terms over those in the estimate are rejected. Net payment terms on purchase orders are accepted. "Entire Agreement" clauses in purchase orders are rejected to the extent that they invalidate the other applicable terms set forth in Paragraph 1.1.2. 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.

## 5.5 Points—what and why

Points are purchased with US dollars. Points can only be used to redeem Boom Cards and assets for making Boom Cards 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. After you purchase the points, you will be directed to go back and check out the products.

We will automatically renew your account from your unspent points balance if you have not timely renewed and have not downgraded to a free account. We may spend your points or enter a negative points balance to obtain satisfaction of a debt you owe us, including debts for dispute fee chargebacks and, for our public authors, refunds you owe us and fees for sales on external sites ("external service fees").

Points are non-refundable and non-transferable. Points do not constitute a personal property right and have no value outside Boom Learning. Points have no cash value and cannot be exchanged for cash. 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 and are unrecoverable. Please read our Privacy Notice 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, and we may elect to reverse all transactions involving such points. We delete points we determine were obtained fraudulently. We may charge you for the value you obtain by fraudulently using points. Purchases of points have daily maximums.

## 5.6 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 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.

## **5.7 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).

## **5.8 All sales are final.**

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.

## **5.9 Contact us first to avoid chargebacks of dispute fees**

You must contact us to request a refund. The best way to do so is when logged in from the Help Center. Please select Customer Service & Sales (including refunds) as your request type for fastest service. If you dispute a charge without contacting us or 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, if 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. We may reclaim the dispute fee by removing points, adding a negative points balance, and/or returning redemptions until there are sufficient points to pay your fee. 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.

## **6. What you can do with Boom Cards**

## 6.1 What you can do

If you have a current account (either free or a paid membership) you can do any of the following:

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

## 6.2 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.

## 6.3. 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 purchased 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 educators. You may not use Boom Cards for any commercial purpose without the author's consent. When in doubt, ask the author.

## 6.4 Using "assets" (you know: images, fonts, sounds, videos, gifs, and more)

Use assets you made yourself or that you have permission to use. You can purchase assets for use from the Boom Store. 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.

## **6.5 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.

## **7.1 Account management**

### **7.1. Accounts and memberships**

You must have an account to use Boom Cards. 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 the terms of memberships at any time in our discretion. Changes will take effect for you on renewal.

### **7.2 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. Membership is also 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 Notice](#). 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 sold are permanently destroyed.

### **7.4 Account sharing is not allowed**



Boom Cards are licensed to a single account operated by a single individual. Each individual, whether their account was purchased directly or by an entity, must have his or her own account. Use our Colleagues feature to share students with co-workers.

Fastplay pins allow you to interact with students with no tracking of student performance. 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.

## 7.5 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.

## 8. Parents

Parents and legal guardians may review student accounts from the student dashboard. Parents must contact the Educator 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 [Student Privacy Notice](#).

## 9. We are FERPA compliant

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

## 10. Government Agency Optional Terms of Service

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 our [Government Agency Terms of Service](#).

## 11. Data is stored in the United States

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

## 12. Account ownership

### 12.1 First purchaser rule

We use a first purchaser rule to determine account ownership. If an individual buys the account, it belongs to the individual for his or her lifetime and cannot be transferred to another individual. Individuals who change entities must delete student records relating to the prior entity. Entities can pay for memberships and points in individual accounts, but doing so will not change the ownership of the account.

If an individual previously purchased an account with out-of-pocket funds and the entity purchases an extended or upgraded membership for that individual, account ownership will be deemed to remain with the individual and is not transferred to the entity. Likewise, points purchased by an entity for use in an account originally purchased by an individual shall be deemed to be owned by the individual.

If an entity buys an account, it belongs to the entity and can be transferred to another individual at that entity. The entity may gift an account to an individual. An individual who purchases Boom Cards in an entity account is making a gift of those Boom Cards to the entity.

If an entity invites an individual account user to join an entity account, and the individual accepts the invitation, the individual is agreement to transfer ownership of the account to the entity. The invitation clearly contains this warning.

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.

### 12.2 Entity accounts are licensed to a classroom or provider

If an entity purchases an account, the entity owns the account and is agreeing to these terms. Entity accounts belong to the classroom or provider for which they were purchased. Entities may transfer accounts they purchase between individuals if a provider changes level, leaves the entity, or goes on leave.

## 13. Security and Breach Response

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

## **14. Representations and Warranties**

### **14.1 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.

### **14.2 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.

### **14.3 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 Public Authors shall be liable to you or any third party if Boom Learning or any product is changed, suspended, or discontinued.

### **14.4 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, entity ID settings, and more. As a result, we can't guarantee that any or all features 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 or not the harm to you was foreseeable. 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 upon which you claim liability, 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.*

## **15. Additional Terms**

### **15.1 No data scraping or automated collection**

Scraping refers to the use of an automated process to extract data from our site, including components of Boom Cards, and the Boom Cards themselves. You may not scrap any of our properties for any reason. Search engines that comply with our robots.txt instructions are permitted to index pages that we authorize for indexing, and only those pages. You are prohibited from using Boom Learning for any activity that (a) facilitates any virus, Trojan horse, worm or other activity that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any code, data, or information; (b) uses of a robot, spider or other automated process, or manual process to monitor or copy Boom Learning, or any portion thereof, without our prior written consent; (c) uses any device, software, routine, or process to bypass any technology protecting access to Boom Learning; or (d) interferes with or attempts to interfere with t

## **15.2 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.

## **15.3 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. Nor does it waive the term in question.

## **15.4 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 to 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).

## **15.5 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.

## **15.6 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.

## **15.7 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.

