

JEFFERSON COUNTY PUBLIC SCHOOLS CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter "Contract") is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "Board"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Omega Labs Inc DBA Boom Learning (hereinafter "Contractor"), with its principal place of business at 9805 NE 116TH ST STE 7198 KIRKLAND WA 98034-4245.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter "Parties") agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract, the Data Sharing/Use Agreement between the Parties (the "DSA"), the Contractor's Terms of Service, and the Contractor's Privacy Policy comprise the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board's Procurement Regulations currently in effect (hereinafter "Regulations") that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail. In the event of a conflict between the terms of this Contract and the terms of the Contractor's Terms of Service or the Contractor's Privacy Policy, the terms of this Contract shall prevail. In the event of a conflict between the terms of the DSA and the terms of service or the Contractor's Privacy Policy, the terms of the DSA shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter "Services") of a quality and in a manner that is within the highest standards of Contractor's profession or business. The Services are as follows:

Contractor grants to Educational Agency a nonexclusive, worldwide, non-transferable, royalty-free license (except for the fees specified in the applicable binding quotations as accepted by the Contractor by a binding Purchase Order) to use the Boom Services for the term of the Contract, which license includes annual memberships and points for individualizing content, to the ECE Communication Disorders Department for Boom Learning which focuses on digital curriculum task cards which can be individualized to address IEP Goals in the

area of speech and language impairment and can be used to support direct instruction for both in-person, and remote learning. A single Purchase Order for licenses for up to 125 memberships and points for individualizing content shall be entered by ECE Communication Disorders Department, for distribution to speech language pathologists based at various school. Boom Learning software license pricing is attached and incorporated herein by reference. Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator for the Board hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

ARTICLE III Compensation

The Board shall pay Contractor the total amount stated below (hereinafter "Contract Amount"). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	Contract amount shall not exceed \$10,525
Progress Payments (if not applicable, insert N/A):	N/A
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	ESSER funds (acct code EC120430650554GD)

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on October 7, 2022 and shall complete the Services no later than October 22, 2023, unless this Contract is modified as provided in Article VIII.

ARTICLE V Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below. Contract Administrator for the Board hereby consents to delegation of obligations necessary to Contractor's operations to the subprocessors listed in Contractor's Subprocessor Disclosure at <https://wow.boomlearning.com/legal/16000121757>.

Contractor shall ensure that each subprocessor with whom it shares Student Data and/or Teacher or Principal Data are contractually bound by a written agreement that (a) that includes obligations of confidentiality equivalent to, consistent with, and no less protective than those found in this agreement, or (b) are engaged under a contract under which they agree that they have no right of access to Contractor's data stored in the subprocessors' cloud-based services.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. Provided, however, that Contractor shall not indemnify for the conduct of Boom Card creators or users. Board shall not indemnify Contractor for claims related to these services. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator for the Board, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled "Ethics and Standards of Conduct," or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination.

ARTICLE X Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of five (5) days after receipt of notice specifying the breach or failure. In the event of termination for default, the Board may secure the required services from another contractor. The rights and remedies of the Board provided in this Article shall be limited to cancellation of the Contract.

ARTICLE XI Disputes

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XII Contractor's Work Product

The Board shall have no intellectual ownership rights in any derivative works created from the Boom Services or purchased Boom Cards unless the Board has secured a separate license from the owner of the work in question to create an authorized derivative work.

No Boom Services qualify as a work for hire, work product, or intellectual property that is assignable to the Educational Agency, even if created in response to a request by Educational Agency for a feature or improvement. Educational Agency agrees and acknowledges that it has no claim of ownership in the works of Licensor or its suppliers.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XIII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer.

ARTICLE XIV

Right to Audit

No more than once in a 365-day period, the Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XV

Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records, Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.
- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of October 7, 2022.

Contractor's Social Security Number or Federal Tax ID Number:

JEFFERSON COUNTY BOARD OF
EDUCATION

Omega Labs Inc. DBA Boom Learning
CONTRACTOR

By: _____

By: _____

Title: Martin A. Pollio, Ed.D.
Superintendent

Mary Oemig
Title: Chief Executive Officer

Cabinet Member: Kim Chevalier

(Initials)

Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: NA

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: NA

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Education Specialist: Software License

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): NA

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): NA

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): NA

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: NA

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: NA

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: NA

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Jennifer Truax

Print name of person making Determination

Exceptional Child Education

School or Department

Signature of person making Determination

Date

Omega Labs Inc. DBA Boom Learning_____
Name of Contractor (Contractor Signature Not Required)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

General Privacy Notice

Modified on: Thu, 26 May, 2022 at 2:51 PM

EFFECTIVE JULY 1, 2021 ([see archived version](#)

<https://help.boomlearning.com/en/support/solutions/folders/16000095966>); Reviewed and renewed effective July 1, 2022.



Guiding Principles

- We want all kids to achieve at their highest possible level.
- We expect kids to make mistakes.
- We believe kids are entitled to leave their mistakes behind.
- We believe kids have a right to veto their presence online.
- We believe in transparency and feedback.

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1. Applicability

1.1 All users

This notice applies to data processed by the Boom Learning web app, iOS app, Android app, and Kindle Fire app (the "**Services**"). It is part of our Terms of Service. It incorporates by reference the following supplemental notices, as applicable to you.

1. **STUDENT PRIVACY NOTICE** (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>)
2. **NOTICE FOR DATA EXPORTERS OF DATA ABOUT NON-US DATA SUBJECTS (EEA, Australia, Canada)** (<https://help.boomlearning.com/en/support/solutions/articles/16000121733-privacy-notice-for-data-exporters-of-data-about-non-us-data-subjects>) {GDPR}
3. **COOKIE NOTICE** (<https://help.boomlearning.com/en/support/solutions/articles/16000121724-cookie-notice>) {GDPR}
4. **DATA ELEMENTS disclosure** (<https://help.boomlearning.com/en/support/solutions/articles/16000087842-data-elements>) {COPPA; SOPPA; SOIPA: NY 2-d, et al}
5. **INFORMATION SECURITY PLAN** (<https://help.boomlearning.com/en/support/solutions/articles/16000121794-information-security-plan>) {NY 2-d}
6. **SUBPROCESSOR disclosure** (<https://help.boomlearning.com/en/support/solutions/articles/16000121757-subcontractor-and-subprocessor-disclosure>) {NY 2-d}

These are provided as distinct documents to allow you to link to them from your website or to include them in parent notices. {COPPA; SOPPA; SOIPA; NY 2-d, et al}

1.2 Alternatives to this notice

We must have binding Privacy Notices in place. We cannot accept any Purchase Order that purports to negate our Privacy Notices unless an acceptable substitute Privacy agreement is in place. **Contact us** to put in place a substitute agreement. Government Agencies may sign and return our **Government Agency Terms of Service** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>) to modify certain terms of our Terms of Service and Privacy Notices.

1.3 Authority to agree on behalf of your entity or organization

You agree that you have the authority to enter into this agreement on behalf of your entity. It sets forth your roles and responsibilities regarding Student Data. If we have a direct privacy agreement with your district, state, or purchasing entity, those terms will prevail over any conflicting terms in this notice. {FERPA}

2. We are for Educators

2.1 Education purpose

Our business purposes (the **Services**) are

- To enable Educators to make, share, buy, sell, and assign awesome digital educational resources (**Boom Cards**) that mostly grade themselves;
- To provide Educators with rapid student performance reporting to give you more time to teach students, intervene faster with those who need it, accelerate those who need it, and occasionally read a long privacy notice (or better yet, a rollicking good book). {FERPA}

2.2 Service Provider directed to Educators

Our Services are provided at the direction of Educators and are Services for which Educators would otherwise use their own employees or agents. To fulfill those purposes, we use any personal information we receive from you (**Educator Data**), as well as any student personal information, student records, or student-generated content (**Student Data**) we receive from your students. Collectively we call this **User Data**. We are marketed and directed to Educators. {FERPA, COPPA; SOPPA; SOPIPA; et al.}

2.3 We are NOT a data reseller

We do not sell User Data. See also our notice regarding **Consumer Privacy Protections - California, Colorado, Utah, and Virginia** (<https://help.boomlearning.com/en/support/solutions/articles/16000130809>).

2.4 Use with children

Educators create accounts for students under their charge. Although minors may use Boom Learning, a responsible adult Educator must accept terms and set up accounts on the minor's behalf. Parents and legal guardians who are homeschooling or after schooling their children may use the product as Educators. We treat payment and verification of an email address as proof of adult status. Educator accounts are for adults only. If we learn that a minor has created an Educator account, we will take steps to delete the information as soon as possible. {FERPA; COPPA}

2.5 Who we are and how to contact us

Boom Learning is a trade name of Omega Labs Inc, a Washington state C Corporation. Our mailing address is 9805 NE 116th St. Suite 7198, Kirkland WA 98034. You can call us at 833-969-2666. You can **contact us** to send us questions about or notifications relating to this policy.

3. Your role as a data controller

We are a service provider enabling you to engage in processing your student data and your teaching assets. We are a service directed toward adult service providers who work with students. When you create a student account you are acting in the place of the parent (*in parentis loci*) for the purposes of verifications and consents required under

the law. You must have all legal consents required of you to add a student before creating a student account. You must have an account and a verified working email address to add students. {FERPA}

3.1 Entity specific considerations

3.1.1 FERPA Entities

United States schools governed by the Family Educational Rights and Privacy Act ("**FERPA**") agree and understand that their legal right to engage us to process student data on their behalf arises under the school official exception of FERPA. The school official exception means that Boom Learning performs a service for which a school would otherwise use employees and Boom Learning operates under the control of the school with respect to the use and maintenance of education records for a legitimate education interest. We use student data solely for the purpose of fulfilling our duties and providing and improving services under this agreement. FERPA entities provide COPPA consent through *in parentis loci*. {FERPA; COPPA}

3.1.2 COPPA Entities that are not FERPA entities

If you are an entity covered by the Children's Online Privacy Protection Act ("**COPPA**") but are not able to consent *in parentis loci* because you are not a FERPA entity (for example a music tutor), you must obtain consent from the parent or guardian before creating a student account as part of your normal business service.

3.1.3 HIPAA Entities

Your collection of Student Data for health therapy interventions must be consistent with the Health Insurance Portability and Accountability Act ("**HIPAA**"), including meeting the requirements of consent and using pseudonyms and private rosters to protect the medical information of patients. You may also need to obtain consent under COPPA.

3.1.4 GDPR Entities

Data controllers subject to the General Data Protection Regulation ("**GDPR**") must obtain consent from their data subjects and must enter into an additional data protection addendum ("**DPA**") before adding students as data subjects. See **NOTICE FOR DATA EXPORTERS OF DATA ABOUT NON-US DATA SUBJECTS** (<https://help.boomlearning.com/en/support/solutions/articles/16000121733-privacy-notice-for-data-exporters-of-data-about-non-us-data-subjects>).

3.1.5 Non-US, non-GDPR Entities

Data exporters must obtain any locally required consents from their data subjects. If the data controller is required to have a signed data export agreement to export student data to the United States, the data controller must enter into an additional data protection addendum ("**DPA**") before adding students as data subjects. See **NOTICE FOR DATA EXPORTERS OF DATA ABOUT NON-US DATA SUBJECTS** (<https://help.boomlearning.com/en/support/solutions/articles/16000121733-privacy-notice-for-data-exporters-of-data-about-non-us-data-subjects>).

3.1.6 Consumer Privacy Protection Acts (such as the CCPA, CPRA, CDPA and more)

The Services are typically governed by state laws applicable to student data in an education setting. If a state law regarding consumer privacy protection applies to the Services, we promise we will not discriminate against the residents of such state for exercising their rights under their applicable state law so long as such exercise comports with the requirements of the applicable state law. See also our notices regarding **Consumer Privacy Protections - California, Colorado, Utah, and Virginia** (<https://help.boomlearning.com/en/support/solutions/articles/16000130809>).

3.2 Verification

You may contact us for assistance to learn which specific personal information we have collected about you and for help deleting personal information. We will require that you (a) provide sufficient information to allow us to reasonably verify that you are the person about whom we collected the personal information or an authorized representative; and (b) describe your request with sufficient detail that allows us to properly understand, evaluate, and respond to it. If you are an authorized representative, we will require proof of your authority to access personal information.

3.3 Student safety is a shared responsibility

We use appropriate physical, electronic, and managerial processes and procedures to safeguard data against unauthorized access and use, including designating and training the individuals responsible for ensuring the security of the data.

3.3.1 Use safeguards

You have a responsibility to use appropriate physical, electronic, and managerial processes and procedures to safeguard Student Data against unauthorized access and use. Passwords you assign to students should be appropriate to their age in complexity, with older students expected to master more complex passwords. You agree you are responsible for your secure use of Boom Learning, including providing or obtaining adequate training on the use of secure authentication, the dangers of open networks, and providing your employees with secure networks on which to use Boom Learning. You agree to use passwords for Educator accounts that are adequately secure to prevent intrusion. It is your responsibility to keep your login information confidential.

3.3.2 Your staff and volunteers

You will take reasonable steps to ensure the reliability of any of your employees, agents, or independent contractors-- including volunteers--who have access to Student Data, including:

- ensuring access is limited to those with a need to know and access the Student Data;
- ensuring that all such individuals are subject to obligations of confidentiality; and
- training such individuals on password security and privacy requirements for your organization.

3.3.3 We can reduce our liability to you if you fail to comply with your data security responsibilities

You agree that any regulatory penalties or other liabilities incurred by Boom Learning in relation to acts that arise as a result of or in connection with your failure to comply with your data security responsibilities will count towards and reduce Boom Learning's liability to you.

4. Changes

We will not make material changes to the terms, including our Privacy Notices, 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 do not alter fundamental commitments does not constitute a material change. You can review previous versions of the notices in our archive. Any version of this Privacy Notice in a language other than English is provided for convenience and the English language version will control if there is any conflict.

5. Data controls and requests

5.1 Educator controls

We provide Educators with a number of self-help controls that may be used to retrieve, correct, delete, or restrict User Data. We don't analyze, process, serve or transfer Student Data until you instruct us to do so by opening an account, adding students, and assigning resources to them. As an Educator, you may update or change most information you have provided to us

5.2 Parent and student access

Parents and students may review Student Data by either reviewing the student dashboard with the student or asking the Educator to show the teacher dashboard for that student. Parents who contact us to review or delete Student Data will be redirected to the Educator. We will not release information to a person other than an Educator unless we are provided satisfactory proof of a legal right to disclose, review or delete student information.

5.3 Data we retain

We will not delete information necessary to be maintained for our business purposes, including but not limited to:

- at least one login authenticator if you are maintaining an active account;
- Boom Cards decks you have sold to other Educators;
- logs for detecting security incidents, deception, and malicious activity;
- logs for detecting fraud and other illegal activity;
- records for internal uses, including debugging and repairing errors, transaction and payment records, and the like;
- data legally required to be maintained (such as tax-related and financial data).

5.4 Data you may not collect

Schools must exercise their right of consent within the confines of any law regarding sensitive data. You may not assign a resource that collects sensitive data unless you have all the required consents. Depending on your governing jurisdiction, sensitive information may include political affiliation; trade union membership; health

information; sexuality information; information about protected relationships such as lawyers or ministers; criminal behavior; firearm ownership; and/or biometric data. You are solely responsible for understanding what you may or may not assign in your jurisdiction.

You agree to indemnify Boom Learning for any liability arising from your actions in assigning a resource that collects information in violation of a law that applies and for any failure by you to provide a student with the required information regarding their rights. If in doubt, consult your legal counsel and governing body.

6. User Data we collect and its disclosure

We collect some User Data automatically and some you (or your school) provide to us. See our **Data Elements** (<https://help.boomlearning.com/en/support/solutions/articles/16000087842-data-elements>) disclosure for details of Student and Educator data we collect. We collect the data elements to provide the Services. Many of those data elements are optional.

For all users, we record the account created timestamp, last login timestamp, the type of device being played (i.e., iOS or Android, but not the device ID), the app version (if playing a Boom Cards app), the OS version of the device, the browser type and version, decks redeemed or purchased, decks made, points available, and school affiliation.

6.1 Public author data

Author store names, avatars, descriptions, grade levels, keywords, product titles, prices, descriptions, and product contents are public and not confidential if published to the Store (information about "**Public Authors**"). We may share this public information on Facebook, Twitter, Pinterest, Instagram, Google, or any other appropriate public marketing service. We may announce publicly top-selling products, top sellers, and new sellers. You may contact us to be omitted from those announcements. Other Public Author data, such as payouts owed, address information, taxpayer identification information, and payouts information is held in confidence.

6.2 Confidential data

Confidential data is secured behind authentication and is encrypted in motion and at rest. Educator names, avatars and descriptions are displayed to students and Educator-selected colleagues.

6.2.1 Disclosures of Confidential Data to Public Authors or External Marketplaces

The name of a user redeeming Boom Cards purchased from a marketplace other than the Boom Learning store may be disclosed to the originating Public Author or marketplace to verify and determine whether the product redeemed was validly purchased if there is evidence that the product may not have been. Such disclosure is only after an investigation determining the user may have violated the law or licensing terms.

6.2.2 Disclosures of Confidential Data to Subprocessors

Our **subprocessor disclosure** (<https://help.boomlearning.com/en/support/solutions/articles/16000121757-subprocessor-disclosure>) details our sharing of data with subprocessors, including our current list of subprocessors. It also discusses your responsibilities with respect to Educator selected subprocessors. Read it

Carefully.

6.3 Student Data

When you assign an educational resource using a method other than Fastplay pins, we collect information about student performance on that resource and report it back to you for your educational use. You should share the **Student Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>) with your families. Student performance data includes information such as resources played, cards played, time to play a resource, time to play a card, correct answers, incorrect answers and other student actions with respect to a card. You can always work with students without collecting Student Data by using Fastplay.

Student Data, other than the user nickname for a classroom roster, is deemed confidential. Educators may optionally enable or disable visibility of a classroom roster to students. Student confidential data may be disclosed as follows:

- The information of students to the Educator who created the student account or to the school or organization employing that Educator or to an Educator provided the information through colleague student sharing.
- The information of students to parents and legal guardians who observe the student dashboard.
- The information of Educators to the school or organization for whom the Educator works.

Student Data is also disclosed to the Student. {COPPA; FERPA; SOPPA; SOIPA; NY 2-d, et al}

6.4 Other data we may collect depending on your interactions with us

6.4.1 Feedback and Ratings

We store feedback you give. Feedback is a private communication between you and a Public Author. We store ratings you give. Ratings and accompanying comments are public information. You may edit any ratings you give after they have been published. Feedback you provide via our support Helpdesk may also be stored in our systems for debugging and development management.

6.4.2 Assets uploaded

We store the fonts, images, and sounds you upload; and videos to which you link. We will retain those so long as the deck to which they were added has active student data records, or for publicly published decks so long as they are in user libraries.

6.4.3 Payment records

To make a payment you will need to provide the information requested by one of our payment processors, such as your name, account number, and verification numbers. Our payment processors use Payment Card Industry Security Data Security Standard (PCI DSS) compliant processes to process payments. They process payments directly. We do not have access to or store your full payment card details. We do have some information, such as your email address, approximate location, and name and payment, and purchase history. You can use My Settings to remove a credit card stored by Stripe. You may edit your Paypal information from your Paypal account.

You may pay by check or ACH. If you pay by purchase order or check, we will store your payment information and tax exemption information, if any, in our accounting records. In some cases, your information may be shared with our accountant or with tax authorities.

6.4.4 Redemptions

We record the authors you redeem, purchase, and assign. These allow us to make adaptive and personalized learning recommendations to you based on you and your students' educational needs. We do not provide personalized recommendations from third parties. We keep track of which users follow you or redeem your products. If you redeem a product we automatically add you to the follow list for the author. Followers are not disclosed to your author without your consent.

6.4.5 Sales history and taxpayer identification

We store records of your sales. If you reach certain thresholds, we may request and store your taxpayer identification number. We also store the information you give us to enable us to pay you.

6.4.6 Created resources

We store the Boom Cards you create and the assets you upload. Any asset added to a deck assigned to a student is retained, even if you delete it. Because Boom Cards are effectively small applications unique to our platform, there is no ability to export created resources in a playable format. However, you may use the print feature to create .pdf versions of your creations.

6.4.7 Referral codes

We may store a referral code if you clicked one to arrive, which may tell us which user or author referred you or whether you arrived from a particular campaign. We do not provide your name to the referring party.

6.4.8 Newsletters and emails

We keep track of newsletter clicks, opens and site actions to better serve you. We have selected ActiveCampaign because their privacy practices and policies are consistent with the needs of the education market. We tell ActiveCampaign about key user actions for adult users. This allows us to provide just-in-time support and to run our recommendation engine for our adult users. We provide you with a variety of tools to opt in and out of how we use ActiveCampaign data. Options include notices only and newsletters about teaching, creating, and selling Boom Cards. We may use aggregate ActiveCampaign data to evaluate and plan external marketing. You can request to see your full ActiveCampaign data map and to have us update or delete information in the map. We maintain separate lists in ActiveCampaign for marketing and being added to those lists requires you to "opt in." See our Privacy Policy for marketing [here \(https://blog.boomlearning.com/privacy-policy/\)](https://blog.boomlearning.com/privacy-policy/). User Data is never automatically added to a marketing list.

7. Cookies

We describe how we use cookies and similar tracking tools in our [Cookie Notice \(https://help.boomlearning.com/en/support/solutions/articles/16000121724-cookie-notice\)](https://help.boomlearning.com/en/support/solutions/articles/16000121724-cookie-notice).

8. No Advertising to Students; Adults Opt In

We don't advertise or market to students. See our [Student Privacy Notice](https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice) (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>).

The Boom Learning platform provides adults with instructional materials recommendations based on the teacher choices made for the student populations served by the teachers. These recommendations further our shared educational purpose and do not constitute use for an advertising, marketing, or commercial purpose. For the absence of doubt, the parties agree that it shall not constitute an advertising, marketing, or commercial purpose for Boom Learning to inform Educators of training opportunities, new Boom Cards, or Boom Learning features or functionality.

We do not use the Services to market or advertise to users. Marketing and advertising to adults is conducted using separate properties, including landing pages, our blog, and social media. Marketing and advertising contact information is collected separately from Services User Data. See our Privacy Policy for our advertising and marketing activities [here](https://blog.boomlearning.com/privacy-policy/) (<https://blog.boomlearning.com/privacy-policy/>).

See 6.1 regarding Public Authors. By becoming a Public Author, you opt in to certain use of your data for advertising and marketing purposes.

9. The Keeping and Deleting of Information

9.1 Self-help tools for Educators

At any time, Educators may delete a student, or contact us to request that we delete a student or your account in the event you are unable to use the self-help tools. You agree to give us 10 days so we can confirm that the person making the request is you and has the right to delete the account. Deletion cannot be undone.

9.2 Account transfer for entities only

To transfer an account from one Educator to another, or to receive a machine-readable data dump from an account, you must contact us. We can only make full account transfers between employees of the same purchasing entity.

9.3 Scheduled deletion for expired accounts

To minimize privacy risk, we schedule deletion of stale accounts after the trigger dates set forth below. Deletions take place after the triggering date during the next scheduled data sweep.

Trigger dates:

- student accounts 90 days after the associated paid Educator membership expires – we assume these students will have a new teacher in the next session; renew early to avoid.
- student accounts 180 days after the last Educator login for free accounts – we assume these are homeschool or small tutor accounts; login in at least once every 179 days to avoid.

- Educator accounts not owned by a school 365 days after last login, at our sole discretion – deletion results in the loss of purchased and redeemed decks, created decks, classrooms, and unused points.

Boom Learning retains copies of all Public Author Boom Cards resources sold and, in its sole discretion, Educator shared Boom Cards to serve the recipients.

10. Information Security Plan

See our **Information Security Plan** (<https://help.boomlearning.com/en/support/solutions/articles/16000121794-information-security-plan>) for details on how we protect Student and Educator data. You may post this link on your website to comply with local requirements.

11. Legal authority data requests

We are required to disclose Personal Information in response to lawful requests by legal authorities, including to meet national security and law enforcement requirements. In the event a legal authority asks to access your data, we will direct the requestor to you and will not take action without your prior authorization, unless legally compelled to do so. If we are legally compelled to respond to such a request, we will promptly notify you and provide you with a copy of the request unless legally prohibited from doing so. If a legal authority is asking for information about a student, the account holder agrees to pass on the notification to the student's legal guardian and indemnifies us for failing to do so.

12. Data Breaches

12.1 Security incidents that constitute data breaches

The definition of a security incident that rises to the level of a data breach varies by jurisdiction. Typically a breach is an incident of data loss or unauthorized data access that (a) compromises the confidentiality or integrity of the data and in doing so (b) is likely to cause harm to the data subjects impacted. A breach typically includes harms that can be substantial (financial information, account credentials, medical information). It does not include speculative harms — a harm must be reasonably likely.

12.2 Security incidents that do not constitute a data breach

Unauthorized access to data that is encrypted is not a breach if the encryption key is not accessed or acquired.

It is not a breach for another person at the same entity with a similar confidentiality obligation to the data subject as the account holder to access the User Data. **Nonetheless, your entity may require you to report accidental, inadvertent or deliberate access by another person at your entity with a similar confidentiality obligation to you to your information security department. Such reporting is the obligation of the Educator who becomes aware of the incident.** Boom Learning has no reporting obligation for security incidents involving persons at the same entity unless agreed otherwise in writing. You should understand that a classroom worker (volunteer or paid)

can likely determine who a student is in real life (“IRL”) from the nickname. You are responsible for ensuring any classroom workers follow your organization’s and locale’s rules, regulations, and laws regarding access to Student Data.

12.4 Breach response procedures

12.4.1 Notice content

In the event of a breach of User Data that contains personal information, we will contact the account holder for the affected individual(s) using the information we have on file. We will provide notice as soon as reasonably possible, provided that we may delay notice if a law enforcement agency determines that the notice will impede a criminal investigation. Such notice will include in plain language What Happened, What Information Was Involved, When It Occurred, What We are Doing, What You Can Do, and For More Information.

12.4.2 Notice timeline

Educators will be notified without undue delay and within 7 days of determining that a data breach affecting school User Data has occurred. We will provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach. In many cases, we do not collect or store information about students that would enable us to contact students or their parents directly.

12.4.3 Notices to regulators

We will provide notices of breaches to the appropriate regulators where required by law, and we may elect to provide such notice, at our option and in our sole discretion, where not required by law. Governmental Agencies that do not want us to provide notice to regulators must complete and return the **Government Agency Terms of Service** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>).

NOTE: Annotations in { } are to assist you in finding key sections of our policy. They are not meant to be an exhaustive mark up of the portions of the policy that implement the indicated statutes. Rather, they are a tool to help you find the most frequently searched for portions of our policy.

Terms of Service

Modified on: Fri, 6 May, 2022 at 9:37 AM

Effective Date July 1, 2021 (see archived versions (<https://help.boomlearning.com/en/support/solutions/folders/16000095966>)); 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**

(<https://help.boomlearning.com/en/support/solutions/folders/16000095984>), and the **Privacy Notices**

(<https://help.boomlearning.com/en/support/solutions/folders/16000095980>), 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>) 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>);
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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>), 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121727-public-author-terms-of-service>),
2. The Boom Learning **Privacy Notices** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice>), 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.

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 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121727-public-author-terms-of-service>) 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>) (<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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-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 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121727-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** (<https://wow.boomlearning.com/ipClaim>). 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. 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

You may use purchase orders to buy points and memberships only through our **Estimate Builder** (<https://www.boomlearning.com/estimateBuilder>). 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-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 \(https://help.boomlearning.com/en/support/solutions/articles/16000060654-font-and-clip-art-permissions-granted-or-denied-list\)](https://help.boomlearning.com/en/support/solutions/articles/16000060654-font-and-clip-art-permissions-granted-or-denied-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](https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-privacy-notice) (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-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](https://wow.boomlearning.com/settings) (<https://wow.boomlearning.com/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](https://help.boomlearning.com/en/support/solutions/articles/16000036052-referral-links-gadgets-and-store-traffic-information) (<https://help.boomlearning.com/en/support/solutions/articles/16000036052-referral-links-gadgets-and-store-traffic-information>). 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](https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice) (<https://help.boomlearning.com/en/support/solutions/articles/16000121715-student-privacy-notice>).

9. We are FERPA compliant

We are Family Education Rights and Privacy Act (FERPA) compliant. Please see our **Privacy Notice** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121732-government-agency-terms-of-service>).

11. Data is stored in the United States

Please see our **Privacy Notice for Data Exporters** (<https://help.boomlearning.com/en/support/solutions/articles/16000121733-privacy-notice-for-data-exporters-of-data-about-non-us-data-subjects>) 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** (<https://help.boomlearning.com/en/support/solutions/articles/16000121725-general-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 IT 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.

 Preview

Government Agency Terms of Service

Modified on: Fri, 4 Jun, 2021 at 3:03 PM

VERSION JULY 1, 2021

When completed and signed by a person with authority to bind the school, and returned to us , it overrides any conflicting terms in the Terms of Service and Privacy Notices. Print the document on paper or to .pdf, complete the required fields, and email to legal@boomlearning.com.

Agreement Terms

1. Applicability

1.1 A **"Government Entity"** is a local, state or provincial, federal or national governmental unit supervised by an elected person or body and based in the United States or its territories. This agreement is designed to serve as a master agreement between the parties.

Government Entity Name	Jefferson County Public Schools
Street Address	3332 Newburg Rd
City	Louisville
County or Parish	Jefferson County
State/Province	KY
Zip or Postal Code	40218
Telephone Number	502-485-3664
Email Contact	tammy.pierce@jefferson.kyschools.us
Termination Date (optional)	
Specifically Applicable Laws (optional field for Governmental Agency to list specific laws it expects Provider to comply with)	

1.2 **"Provider"** is Boom Learning (a dba of Omega Labs Inc., a WA corporation) with a mailing address of 9805 NE 116th ST #7198 Kirkland WA 98034 and a physical place of business at 10916 101st PL NE Kirkland WA 98033 (DO NOT MAIL TO THIS ADDRESS).

1.3 The entire agreement of the parties shall consist of the following, In the event of any conflicting terms, order of precedence shall be:

1. Any separate data privacy agreement or rider signed by the parties.
2. This Government Agency Terms Agreement.
3. Any rate sheet provided to Government Entity.
4. The Boom Learning Privacy Notice, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.
5. The Boom Learning Terms of Service, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.

6. Any purchase order provided by Government Entity, to the extent not superseded by the above listed documents and only to the extent applicable to the product and quantities purchased.

2. Applicable Laws and Dispute Resolution

2.1 The governing law for the formal legal action shall be the governing laws of the city, county, state or province, and nation of the Government Entity listed herein. Government Agency may opt to specify a particular law or laws applicable to the data it is supplying to Provider; provided, however, that doing so does not excuse Provider from compliance with all applicable laws. Any data that must be kept in confidence under such laws shall be considered "**Protected Data**".

2.2 The parties agree to strike in its entirety all references to arbitration in Provider's Terms of Service and Privacy Policies. The parties agree in good faith to use the following lower-cost options to resolve disputes before resorting to court action:

- negotiation between representatives with the authority to settle the controversy.
- if negotiations do not resolve the matter, then:
 - If the matter is in the subject matter jurisdiction of the Copyright Claims Board, and the Copyright Claims Board accepts the matter, to use the Copyright Claims Board to resolve the matter;
 - If the total amount in controversy is less than \$100,000, to use virtual mediation through JAMSconnect or another online mediator of Government Agency's choosing; and
- If none of the above are available or successful in resolving the dispute, the parties may proceed with formal legal action.

2.3 The venue for formal legal action shall be the courts of the county or parish listed by the Government Agency in this document, which shall be a county or parish in which the Government Agency has a location. If the Government Agency fails to list a county or parish, the venue shall be in any county or parish within the state or province in which the Government Agency is located. If Government Agency fails to list a state or province, then the venue shall be in King County in the State of Washington.

3. Indemnification

3.1 Provider agrees to indemnify and hold harmless the Government Entity for the damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to Provider's agents and employees concerning student data, copyright, or trademark. Such costs include reimbursing the costs of providing breach notifications attributable to Provider's negligence or misconduct, and providing replacement content or obtaining rights for continued use. Provider shall maintain general liability and cyber liability insurance.

3.2 Provider shall have no indemnification obligations to the Government Agency for damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to the Government Agency, its employees or its agents for any claim whatsoever, including but not limited to: violations of privacy rights, copyrights, and trademark rights by the affirmative acts of Government Agency and its employees and agents.

3.3 Provider shall have no liability to the Government Entity for any liability arising from the Government Entity's actions in assigning a resource that collects information in violation of a law that applies and for any failure by the Governmental Entity to provide a student with any required information regarding their rights.

4. Disclosure and Deletion of Protected Data

4.1 Provider shall not disclose Protected Data other than to those of its employees or agents who have a need to know such Protected Data to provide the services contracted under this agreement. All Protected Data shall remain the property of the Government Entity. All parent or student requests for access to Protected Data will be direct to the school.

4.2 Government Entity consents to the delegation of duties to the subcontractors and subprocessors listed in the **Subcontractor and Subprocessors disclosure list** (<https://help.boomlearning.com/en/support/solutions/articles/16000121757-subcontractor-and-subprocessor-disclosure>), unless an objection is filed with Provider in writing and is accepted by Provider

4.3 At all times, Provider supplies Government Entity with self-help tools to delete Protected Data. Data deletion is irreversible. Upon expiration, Government Entity is expected to promptly (within 90 days) use the tools provided to delete Protected Data no longer required by Government Entity. Deletion instructions result in unrecoverable and irreversible data deletion. Government Entity is also provided self-help tools to export reports of student progress. In the event Government Entity is unable to issue instructions using the provided self-help tools, Government Entity may **contact** (<https://www.boomlearning.com/help>) Provider to perform deletion or export. If Government Entity fails to promptly delete Protected Data from expired and non-renewed Government Entity accounts, Provider may delete that data as specified in Provider's Privacy Policy.

5. Audits

Provider will provide responses to all reasonable requests for information made by Government Entity, including responses to information security and audit questionnaires, provided that Government Entity will not exercise this right more than once per year. Provider's answers to such responses are Provider's confidential information. Government Entity agrees to hold any such answers in strictest confidence. Such audits are subject to reasonable time and manner restrictions. Provider will cooperate reasonably with any state or federal agency with jurisdiction in connection with any audit or investigation of Provider and/or the delivery of the services. Provider will provide to verified agents of Government Entity reasonable access to the Government Entity's Protected Data and Provider's staff and agents.

6. Data Breach

6.1 A security incident that rises to the level of a data breach is an incident of data loss or unauthorized data access that (a) compromises the confidentiality or integrity of the data and in doing so (b) is likely to cause harm to the data subjects impacted. A breach includes harms that can be substantial (financial information, account credentials, medical information); it excludes speculative harms — a harm must be reasonably likely. Unauthorized access to data that is encrypted is not a breach if the encryption key is not accessed or acquired.

6.2 In the event of a breach arising because another person at the Government Agency accesses Protected Data, Provider shall co-operate with Government Entity and take such reasonable commercial steps as are directed by Government Entity to assist in the investigation, mitigation, and remediation of each Protected Data Breach, provided that Government Entity shall reimburse Provider for expenses arising from a breach attributable to Government Entity's employees and agents.

6.3 **Notice recipients and delivery.** In many cases, we do not collect or store information about students that would enable us to contact students or their parents directly. We will contact the account holder for the affected individual(s) using the information we have on file. Where Government Entity has not provided Provider with contact information for data subjects, Government Entity shall be responsible for notifying data subjects. Such notification shall be at Provider's expense solely where the breach is attributable to the conduct of Provider's employees, agents, subcontractors or subprocessors.

6.4 **Notice content.** Notice will include in plain language What Happened, What Information Was Involved, When It Occurred, What We are Doing, What You Can Do, and For More Information.

6.5 **Notice timeline.** We will provide notice as soon as reasonably possible, provided that we may delay notice if a law enforcement agency determines that the notice will impede a criminal investigation. Educators will be notified without undue delay and within 7 days of determining that a data breach affecting school User Data has occurred. We will provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach.

6.6 Provider may not report a breach directly to the applicable state regulators unless directed in writing by the Government Entity. The Government Entity agrees to indemnify and hold Provider harmless from any fines, fees, or liabilities assessed against Provider for not reporting the breach. Where this paragraph is inconsistent with state and local law, Provider may report the breach directly to the applicable state regulators with no liability to Government Entity and without such report being a breach of this agreement.

7. Termination

7.1 This agreement will terminate on the last expiration date of the last accounts purchased by the Government Entity or on the data specified in the header, whichever is sooner. In the event the Government Entity enters a date in the header, Government Entity is responsible for contacting Provider and requesting a renewal in writing if the agreement expires before the last purchase account expires. If the Government Entity does not request such a renewal, the Government Entity is responsible for instructing its users to cease using Provider in a manner that collects Protected Data on the expiration of the Addendum.

7.2 As a penalty for Provider's noncompliance with its obligations under this Agreement, the Government Entity may terminate its relationship with Provider in writing and demand a refund of all unredeemed purchased points and a pro-rata refund of the remaining portion of the annual membership. Such termination shall be effective on delivery of the notice by email to legal@boomlearning.com, by certified mail to 9805 NE 116th ST #7198 Kirkland WA 98034, or by in-person delivery (not mail) to 10916 101st PL NE Kirkland WA 98033.

7.3 Should any provision of the agreement be invalid or unenforceable, then the remainder of the agreement shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

8. Acceptance

This agreement is a general offer of terms to any party that is a Government Entity as defined herein. To accept the terms, complete the form below and return. By signing and returning this Government Agency Terms of Service agreement, the authorized representative of the Government Entity warrants and represents that it is a Government Entity. Any Government Agency Terms of Service agreement signed and returned to Provider by a party that is not a Government Entity is null and void.

I hereby warrant and represent that I, Dr. Martin Pollio (printed name), have the authority to sign and bind the Government Entity, pursuant to a policy adopted by the Government Entity's governing board or body, to this agreement with Provider and to bind the teachers, staff, agents and employees of the Government Entity to its

terms.

Signed: _____ Date: _____

Title: Superintendent

Government Agency Name: Jefferson County Public Schools

I hereby warrant and represent that I, Mary Oemig (printed name), have the authority to sign and bind the Provider to this agreement with Government Agency.

Signed: _____ Date: _____

Chief Executive Officer

Boom Learning (a dba of Omega Labs Inc.)