

## **Data Sharing/Use Agreement**

**Between**

**Jefferson County Board of Education**

**And**

**Omega Labs Inc DBA Boom Learning**

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Omega Labs Inc DBA Boom Learning, a Vendor Corporation organized under the laws of Washington. ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

### **A. PERIOD OF THE AGREEMENT**

This Agreement shall be effective as of October 7, 2022 and will terminate when the services contract referenced in Paragraph B.1. below terminates, unless terminated earlier by either party pursuant to Section H.

### **B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA**

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective October 7, 2022: Software licenses, which 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.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records.

The confidential data, including student and non-student information to be disclosed, is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.

4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

#### **C. CONSTRAINTS ON USE OF DATA**

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual-level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

#### **D. DATA CONFIDENTIALITY AND DATA SECURITY**

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.

2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
  - a. In all respects comply with the provisions of FERPA.
  - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
  - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
  - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
  - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.
  - f. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.
4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to

additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.

6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
  - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
  - b. Encrypting all data carried on mobile computers/devices;
  - c. Encrypting data before it is transmitted electronically;
  - d. Requiring that users be uniquely identified and authenticated before accessing data;
  - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
  - f. Ensuring that all staff accessing data sign a nondisclosure statement, attached as **Attachment B**, and maintain copies of signed statements;
  - g. Securing access to any physical areas/electronic devices where sensitive data are stored;
  - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
  - i. Installing anti-virus software to protect the network.
7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
  - a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
    - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
    - ii. A Social Security number;

- iii. A taxpayer identification number that incorporates a Social Security number;
  - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
  - v. A passport number or other identification number issued by the United States government; or
  - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
  - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
  - d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
  - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
- a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
  - b. Pursuant to KRS 365.734(2), Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
  - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
  - d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

9. Services Provider shall report all known or suspected breaches of the data, in any format, to Dr. Kermit Belcher, Chief Information Officer. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement. Services Provider agrees to require all employees, contractors, or agents of any kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.
11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates Eric Oemig (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.
12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$3M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County  
Attn: Insurance/Real Estate Dept.  
3332 Newburg Road  
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized

questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

#### **E. FINANCIAL COSTS OF DATA-SHARING**

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

#### **F. OBLIGATIONS OF JCPS**

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the data described in **Attachment A**.

#### **G. LIABILITY**

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement.

#### **H. TERMINATION**

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
  - a. By either party in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
  - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, within seven (7) days of the termination the confidential information shall be returned or destroyed within seven (7) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within seven (7) days after the end of the term, Services Provider shall return or destroy all confidential information and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11.



3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

#### **I. PUBLICATIONS AND COPYRIGHTS**

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

#### **J. MODIFICATION**

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

#### **K. QUALITY OF SERVICES**

JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as outlined in Paragraph B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement, subject to Service Provider's right to cure under Section H.1.a. of this Agreement.

#### **L. BREACH OF DATA CONFIDENTIALITY**

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

#### **M. CHOICE OF LAW AND FORUM**

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

#### **N. WAIVER**

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

#### **O. SEVERABILITY**



If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

**P. NOTICES**

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, 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.

**Q. RELATIONSHIP OF PARTIES**


JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

**R. ENTIRE AGREEMENT; ASSIGNMENT**

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

**AGREED:**

Omega Labs Inc DBA Boom Learning  
9805 NE 116th St #7198  
Kirkland WA 98034

BY:  \_\_\_\_\_

Name: Mary Oemig

Title: Chief Executive Officer

Date: 9/15/2022

**AGREED:**

Jefferson County Board of Education  
3332 Newburg Road  
Louisville KY 40218

BY: \_\_\_\_\_

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: \_\_\_\_\_


## ATTACHMENT "A" (of the Data Sharing Agreement)

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input checked="" type="checkbox"/>
	Other application technology meta data-Please specify: <i>platform, browser, build number</i>	<input checked="" type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application – <i>Last login</i>	<input checked="" type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data-Please specify: <i>formative and summative as assigned by the teacher</i>	<input checked="" type="checkbox"/>
Attendance	Student school (daily) attendance data	<input type="checkbox"/>
	Student class attendance data	<input type="checkbox"/>
Communications	Online communications captured (emails, blog entries) <small><i>Educator to publishing Public author feedback</i></small>	<input checked="" type="checkbox"/>
Conduct	Conduct or behavioral data - <i>only to the extent an Educator creates and/or assigns a Boom Cards resource that collects such information</i>	<input checked="" type="checkbox"/>
Demographics	Date of Birth	<input type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input type="checkbox"/>
	Ethnicity or race	<input type="checkbox"/>
	Language information (native, or primary language spoken by student)	<input type="checkbox"/>
	Other demographic information-Please specify: <i>school location can be inferred from teacher's or student's email domain if a school account</i>	<input checked="" type="checkbox"/>
Enrollment	Student school enrollment	<input type="checkbox"/>
	Student grade level - <i>can be inferred if the Educator provides the information</i>	<input type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs - <i>may be able to be inferred from Educator assigned content</i>	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information-Please specify:	<input type="checkbox"/>
	Address	<input type="checkbox"/>

6.30.22 - G/DRIVE

Category of Data	Elements	Check if Used by Your System
Parent/Guardian Contact Information	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names - <i>when provided by the Educators</i>	<input checked="" type="checkbox"/>
Special Indicator	English language learner information	<input type="checkbox"/>
	Low income status	<input type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>
	Student disability information	<input type="checkbox"/>
	Specialized education services (IEP or 504)	<input type="checkbox"/>
	Living situations (homeless/foster care)	<input type="checkbox"/>
	Other indicator information-Please specify:	<input type="checkbox"/>
Student Contact Information	Address	<input type="checkbox"/>
	Email - <i>where the Educator uses an authentication method that supplies an email</i>	<input checked="" type="checkbox"/>
	Phone	<input type="checkbox"/>
Student Identifiers	Local (School district) ID number - <i>where included in student email address (we do not extract it)</i>	<input checked="" type="checkbox"/>
	State ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input checked="" type="checkbox"/>
	Student app username	<input checked="" type="checkbox"/>
	Student app passwords - <i>encrypted</i>	<input checked="" type="checkbox"/>
Student Name	First and/or Last - <i>yes as most Educators provide actual names; pseudonyms are allowed</i>	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level) - <i>yes if the Educator assigns using student performance collection; Educators may avoid by using only Fastplay assignments</i>	<input checked="" type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires - <i>when an Educator assigns a Boom Cards mini-app that functions as a survey or questionnaire</i>	<input checked="" type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
Student work	Student generated content; writing, pictures, etc. - <i>short written answers; eventually student created decks</i>	<input checked="" type="checkbox"/>
	Other student work data -Please specify: fill in the blank; multiple choice; and other responsive choices	<input checked="" type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/ performance scores	<input type="checkbox"/>
	Other transcript data - Please specify:	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other transportation data – Please specify:	<input type="checkbox"/>

Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p><b>Required data elements for Teachers</b></p> <ul style="list-style-type: none"> <li>• Email – a unique, valid email address</li> <li>• Username – globally unique string</li> <li>• Password – any string; encrypted</li> <li>• Teacher Nickname – any string</li> <li>• Teacher name - must be a real name</li> <li>• Full address - if making a purchase</li> </ul> <p><b>Optional data elements for Teachers</b></p> <ul style="list-style-type: none"> <li>• “classroom” data items are “optional” - they become required if a teacher uses data processing and reporting of student performance data features</li> <li>• Classroom username – globally unique string</li> <li>• Classroom password – any string. This password is not stored encrypted as it is only an access point.</li> <li>• Classroom Nickname – any string eg “Kindergarten AM” or “Algebra”</li> <li>• “full address” info is required only for purchasing purposes</li> </ul> <p><b>Required data elements for Students</b></p> <p>Teachers can add/delete/rename student accounts at will.</p> <p>Only teachers can reset forgotten student passwords.</p> <ul style="list-style-type: none"> <li>• Username – globally unique string; can be changed by student and teacher</li> <li>• Password – any string; can be changed by student and teacher; encrypted</li> <li>• Nickname – any string; can be changed by student and teacher; can be locked by teacher; may be pseudonymous or a named identifier</li> </ul> <p>Schools shall supply identifiers that comply with the school's policies. If a school elects to use a third party authentication service (such as Google Single or Microsoft Sign On), the school agrees that it may provide to Boom Learning the information required to authenticate students. The authenticator may deliver a persistent identifier, student name, student email address, and an avatar.</p> <p><b>Collect student progress data elements</b></p> <p>When students play lessons with progress reporting enabled, Boom Learning collects the following information:</p> <ul style="list-style-type: none"> <li>• Device info: (browser version, os type)</li> <li>• Time spent</li> <li>• Student responses.</li> </ul> <p>Students cannot delete log data.</p> <p>Teachers can delete some or all student log data.</p>	
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Category of Data	Elements	Check if Used by Your System
None	No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable.	<input data-bbox="1373 531 1422 579" type="checkbox"/>



## **ATTACHMENT B**

### **OMEGA LABS INC.**

#### **EMPLOYEE CONFIDENTIALITY AND INVENTIONS ASSIGNMENT AGREEMENT**

As a condition of my becoming employed (or my employment being continued) by Omega Labs, Inc. a Washington Corporation, or any of its current or future subsidiaries, affiliates, successors or assigns (collectively, the "Company"), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by the Company, I agree to the following:

1. **Relationship.** This Agreement will apply to my employment relationship with the Company. If that relationship ends and the Company, within a year thereafter, either reemploys me or engages me as a consultant, I agree that this Agreement will also apply to such later employment or consulting relationship, unless the Company and I otherwise agree in writing. Any such employment or consulting relationship between the Company and me, whether commenced prior to, upon or after the date of this Agreement, is referred to herein as the "Relationship."

2. **Defend Trade Secret Act Trade Secret Disclosure Notice.** Notice is hereby given that this agreement does not affect any immunity under 18 U.S.C. §§ 1833(b)(1) or (2). For the purposes of these subsections only, which are reproduced below, individuals performing work as contractors or consultants are considered to be employees.

(a) An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b) An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

3. **Confidential Information.**

(a) **Protection of Information.** I agree, at all times during the term of the Relationship and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company to the extent necessary to perform my obligations to the Company under the Relationship, and not to disclose to any person, firm, corporation or other entity, without written authorization from the Company in each instance, any Confidential Information (as defined below) that I obtain, access or create during the term of the Relationship, whether or not during working hours, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of mine or of others who were under

confidentiality obligations as to the item or items involved. I further agree not to make copies of such Confidential Information except as authorized by the Company.

(b) **Confidential Information.** I understand that "Confidential Information" means information and physical material not generally known or available outside the Company and information and physical material entrusted to the Company in confidence by third parties, including but not limited to the personal data of customers and students. Confidential Information includes, without limitation: (i) Company Inventions (as defined below); (ii) technical data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, developments, inventions, notebooks, processes, formulas, techniques, engineering designs and drawings, hardware configuration information, lists of, or information relating to, employees and consultants of the Company (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and consultants), lists of, or information relating to, suppliers and customers, (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the Relationship), teacher and student data, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed to me by the Company either directly or indirectly, whether in writing, electronically, orally, or by observation.

(c) **Third Party Information.** My agreements in this Section 3 are intended to be for the benefit of the Company and any third party that has entrusted information or physical material to the Company in confidence.

(d) **Other Rights.** This Agreement is intended to supplement, and not to supersede, any rights the Company may have in law or equity with respect to the protection of trade secrets or confidential or proprietary information.

#### 4. **Ownership of Inventions.**

(a) **Inventions Retained and Licensed.** I have

No inventions, improvements, or original works of authorship. I represent that there are no such Inventions at the time of signing this Agreement.

Completed Exhibit A, providing a complete list describing with particularity all Inventions (as defined below) that, as of the Effective Date, belong solely to me or belong to me jointly with others, and that relate in any way to any of the Company's proposed businesses, products or research and development, and which are not assigned to the Company hereunder.

(b) **Use or Incorporation of Inventions.** If in the course of the Relationship, I use or incorporate into a product, process or machine any Invention not covered by Section 4(d) of this Agreement in which I have an interest, I will promptly so inform the Company. Whether or not I give such notice, I hereby irrevocably grant to the Company a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with right to transfer and to sublicense, to practice and exploit such Invention and to make, have made, copy, modify, make

derivative works of, use, sell, import, and otherwise distribute under all applicable intellectual properties without restriction of any kind.

(c) **Inventions.** I understand that "Inventions" means discoveries, developments, concepts, designs, ideas, know how, improvements, inventions, trade secrets and/or original works of authorship, whether or not patentable, copyrightable or otherwise legally protectable. I understand this includes, but is not limited to, any new product, method, procedure, process, technique, use, device, system, design or configuration of any kind, or any improvement thereon. I understand that "Company Inventions" means any and all Inventions that I may solely or jointly author, discover, develop, conceive, or reduce to practice during the period of the Relationship, except as otherwise provided in Section 4(g) below.

(d) **Assignment of Company Inventions.** I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title and interest throughout the world in and to any and all Company Inventions. I further acknowledge that all Company Inventions that are made by me (solely or jointly with others) within the scope of and during the period of the Relationship are "works made for hire" (to the greatest extent permitted by applicable law) and are compensated by my salary. I hereby waive and irrevocably quitclaim to the Company or its designee any and all claims, of any nature whatsoever, that I now have or may hereafter have for infringement of any and all Company Inventions.

(e) **Maintenance of Records.** I agree to keep and maintain adequate and current written records of all Company Inventions made by me (solely or jointly with others) during the term of the Relationship. The records may be in the form of notes, sketches, drawings, flow charts, electronic data or recordings, notebooks, or any other format. The records will be available to and remain the sole property of the Company at all times. I agree to store such records securely in online secure locations managed by Company. I agree to deliver all such records (including any copies thereof) to the Company at the time of termination of the Relationship as provided for in Sections 5 and 6.

(f) **Patent and Copyright Rights.** I agree to assist the Company, or its designee, at its expense, in every proper way to secure the Company's, or its designee's, rights in the Company Inventions and any copyrights, patents, trademarks, mask work rights, moral rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company or its designee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which the Company or its designee shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, waive such rights, and in order to assign and convey to the Company or its designee, and any successors, assigns and nominees the sole and exclusive right, title and interest in and to such Company Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue during and at all times after the end of the Relationship and until the expiration of the last such intellectual property right to expire in any country of the world. I hereby irrevocably designate and appoint the Company and its duly authorized officers and

agents as my agent and attorney-in-fact, to act for and in my behalf and

stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters of patents, copyright, mask work and other registrations related to such Company Inventions. This power of attorney is coupled with an interest and shall not be affected by my subsequent incapacity.

(g) **Exception to Assignments.** I understand that the Company Inventions will not include, and the provisions of this Agreement requiring assignment of inventions to the Company do not apply to, any invention which qualifies fully for exclusion under the provisions of applicable state law, which will be provided to me, if any, as an Exhibit B. In order to assist in the determination of which inventions qualify for such exclusion, I will advise the Company promptly in writing, during and after the term of the Relationship, of all Inventions solely or jointly conceived or developed or reduced to practice by me during the period of the Relationship.

5. **Company Property: Returning Company Documents.** I acknowledge and agree that I have no expectation of privacy with respect to the Company's telecommunications, networking or information processing systems (including, without limitation, files, e-mail messages, and voice messages) and that my activity and any files or messages on or using any of those systems may be monitored at any time without notice. I further agree that any property owned by the Company, is subject to inspection by Company personnel at any time with or without notice. I agree that, at the time of termination of the Relationship, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, sketches, notebooks, equipment, other documents or property, or reproductions of any of the aforementioned items developed by me pursuant to the Relationship or otherwise belonging to the Company, its successors or assigns.

6. **Termination Certification.** In the event of the termination of the Relationship, I agree to sign and deliver a "Termination Certification" the form of being provided to me herewith; however, my failure to sign and deliver the Termination Certification shall in no way diminish my continuing obligations under this Agreement.

7. **Notice to Third Parties.** I understand and agree that the Company may, with or without prior notice to me and during or after the term of the Relationship, notify third parties of my agreements and obligations under this Agreement.

8. **Solicitation of Employees, Consultants and Other Parties.** As described above, I acknowledge and agree that the Company's Confidential Information includes information relating to the Company's employees, consultants, customers and others, and that I will not use or disclose such Confidential Information except as authorized by the Company. I further agree as follows:

(a) **Employees, Consultants.** I agree that during the term of the Relationship, and for a period of twelve (12) months immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or attempt to solicit, induce, recruit, encourage or

take away employees or consultants of the Company, either for myself or for any other person or entity.

(b) **Other Parties.** I agree that during the term of the Relationship, and for a period of twelve (12) months immediately following the termination of the Relationship for any reason, whether with or without cause, I shall not use any Confidential Information of the Company to negatively influence any of the Company's clients or customers from purchasing Company products or services or to solicit or influence or attempt to influence any client, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Company.

9. **Representations and Covenants.**

(a) **Facilitation of Agreement.** I agree to execute promptly, both during and after the end of the Relationship, any proper oath, and to verify any proper document, required to carry out the terms of this Agreement, upon the Company's written request to do so.

(b) **Voluntary Execution.** I certify and acknowledge that I have carefully read all of the provisions of this Agreement, that I understand and have voluntarily accepted such provisions, and that I will fully and faithfully comply with such provisions.

10. **General Provisions.**

(a) **Governing Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Washington, without giving effect to the principles of conflict of laws.

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Company and me relating to its subject matter hereof and supersedes all prior agreements of the parties, whether oral or written. No amendment to this Agreement will be effective unless in writing signed by both parties to this Agreement.

(c) **Waiver.** The Company shall not be deemed hereby to have waived any rights or remedies it may have in law or equity, nor to have given any authorizations or waived any of its rights under this Agreement, unless, and only to the extent, it does so by a specific writing signed by a duly authorized officer of the Company, it being understood that, even if I am an officer of the Company, I will not have authority to give any such authorizations or waivers for the Company under this Agreement without specific approval by the Board of Directors. Any subsequent change or changes in my duties, obligations, rights or compensation will not affect the validity or scope of this Agreement.

(d) **Severability.** If any provision, term, covenant or obligation of this Agreement, or its application, is held invalid, unenforceable, or unlawful, such invalidity, unenforceability or unlawfulness, shall not affect the other provisions, terms, covenants or obligations of this letter, or their application, which all shall remain valid and enforceable in full force and effect to the extent permitted by law.

(e) **Successors and Assigns.** This Agreement will be binding upon my

heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns. The provisions of this Agreement shall survive the assignment of the Agreement by the Company to any successor in interest or other assignee.

(f) **Remedies.** I acknowledge and agree that violation of this Agreement by me may cause the Company irreparable harm, and therefore agree that the Company will be entitled to seek extraordinary relief in court, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions without the necessity of posting a bond or other security (or, where such a bond or security is required, I agree that a \$1,000 bond will be adequate), in addition to and without prejudice to any other rights or remedies that the Company may have for a breach of this Agreement.

(g) **Advice of Counsel.** I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

EXECUTED ON THE RESPECTIVE DATES SET FORTH BELOW

Employee:  
61748842.2

Company: