DATE:
1/13/2022

AGENDA ITEM (ACTION ITEM):
Consider/Approve the purchase of 19 SLP and 380 student annual subscriptions for Boom Learning for speech therapy instruction for use by all schools within the Kenton County School District.

APPLICABLE BOARD POLICY:
01.1 Legal Status of the Board

HISTORY/BACKGROUND:
The Kenton County School District has consistently purchased 19 SLP and 380 student subscriptions for students and staff from Boom Learning. Once the subscription is renewed, all SLPs will have full access to utilize the program with students for 6 months. This program provides both instructional resources as well as data collection tools to determine student progress.
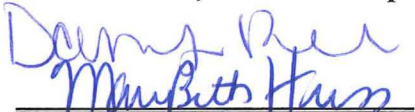
FISCAL/BUDGETARY IMPACT:
$2,279.05 with annual renewal paid out of Special Education: IDEA

RECOMMENDATION:
Approval to purchase of 19 SLP and 380 student annual subscriptions for Boom Learning for speech therapy instruction for use by all schools within the Kenton County School District.

CONTACT PERSON:
Danielle Rice, Director of Special Education

_____ _____ _____
*Principal/Administrator*   *District Administrator*   *Superintendent*

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

Boom Learning
PO Box 736102
Dallas, TX 75373
+1 2063493491
sales@boomlearning.com
https://wow.boomlearning.com

Estimate 2271
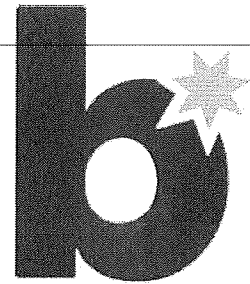
ADDRESS	**SHIP TO**
Nancy Hoffman	Nancy Hoffman
River Ridge Elementary	River Ridge Elementary
Kenton County School District	Kenton County School District
1055 Eaton Drive	1055 Eaton Drive
Villa Hills, KY 41017 US	Villa Hills, KY 41017 US

DATE 01/13/2023

CUSTOMER ID
H4dvLRYgGDWwhPCAR

ACTIVITY	QTY	RATE	AMOUNT
Memberships:Boom Plus Per Teacher Charge [SUBSCRIPTION FROM 02/03/2023-08/03/2023] Includes: (1) student performance reporting for a single teacher (2) the ability to create and store unlimited do-it-yourself Boom Cards decks, including creating with sound, and share those DIY Boom Cards with colleagues. Does not include points for redeeming ready-made Boom Cards.	19	19.95	379.05
Memberships:Boom Plus Per Student Charge [SUBSCRIPTION FROM 02/03/2023-08/03/2023; INCLUDED WITH PER TEACHER CHARGE]Student seats for teacher accounts. Student seat limit shared between all users on an account. The default number of student seats is 20 students per Teacher account purchased. Additional seats may be purchased at 2.00 per student seat.	380	0.00	0.00
Points:Curriculum Points One package of 1,000 Points for redeeming content in the Boom Store	190	10.00	1,900.00

SUBTOTAL	2,279.05
TAX	0.00
TOTAL	**USD 2,279.05**

Accepted By   Accepted Date

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	
Street Address	
City	
County or Parish	
State/Province	
Zip or Postal Code	
Telephone Number	
Email Contact	
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://wow.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, _____ (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
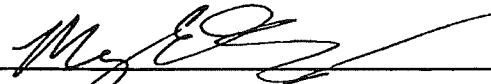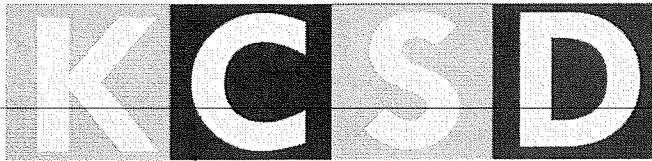
terms.

Signed: _____ Date: _____

Title:_____

Government Agency Name: _____

I hereby warrant and represent that I, _____ (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.)

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

Kenton County School District | *It's about ALL kids*

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

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

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

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

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

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

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

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

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

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

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

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

Student Data Security

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

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

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

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

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

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

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

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

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

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

Omega Labs Inc. dba Boom Learning
_____
Vendor Name

9805 NE 116th Street, Ste 7198, Kirkland, WA 98034
_____
Vendor Address

833-WOW-BOOM
_____
Vendor Telephone

legal@boomlearning.com
_____
Vendor Email Address

Eric Oemig (Jul 18, 2022 16:33 PDT)
_____
Signature by Vendor's Authorized Representative

Eric Oemig
_____
Print Name

July 18, 2022
_____
Date