



Data Protection and Security Addendum for Schools ("DPA")

An Addendum to the Boom Learning Terms of Service & Privacy Policy

regarding the Control, Disclosure & Use of Personal Data,
and the international transfer of Personal Data to the United States

Version Date: 18 May 2018

Effective Date: When Signed and Delivered to Boom Learning

The Boom Learning teaching platform enables schools, teachers, staff, parents and tutors (the **"Educators"**) to create or buy self-grading teaching resources and share information about those resources with other Educators; to assign those resources to students; and to obtain reports on student performance (the **"Student Data"**) (collectively the **"Services"**).

EEA Educators

Educators residing in the EEA or who assign resources to students residing in the EEA are subject to regulations for international transfers of Personal Data under the EU General Data Protection Regulation 2016/679 (the **"GDPR"**). To the extent Student Data constitutes Personal Data, EEA Educators are Controllers and Boom Learning is a Processor of such data. Because Boom Learning is based in the United States, this DPA must be signed for EEA Educators to use the Classes feature. The GDPR does not apply to parents in the course of a purely personal or household activity.

Other Schools

A variety of other jurisdictions require Schools to enter signed agreements regarding the collection, disclosure, and use of Student Data. Boom Learning conducts an annual review of state by state law and updates this DPA (as of the effective date) to reflect changes in state law requiring a separate agreement.

ADDENDUM TERMS

1.1 This DPA supplements and forms part of the Terms of Service (which include the Boom Learning Privacy Policy and Cookie Policy) (the "**Terms of Service**") between Boom Learning and School. In consideration of the mutual obligations set out herein, the parties amend and add to those Terms of Service the terms and conditions of this DPA. Further references in this addendum to the Terms of Service are to the Terms of Service as amended. Nothing in this DPA reduces Boom Learning's obligations under the Terms of Service in relation to the protection of Personal Data or permits Boom Learning to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Terms of Service. In the event of inconsistencies between the provisions of this DPA and any other agreements between the parties, the provisions of this DPA shall prevail. This DPA supersedes any prior agreement on the same or similar subject matter.

2. Definitions

2.1 "**Affiliate**" means any entity that directly or indirectly controls, is controlled by or is under common control with an entity. For the purposes of relationships between legal business entities, "common control" shall mean ownership, voting or similar supervisory legal authority.

2.2 "**Boom Learning**" is the trade name of Omega Labs Inc., a United States corporation incorporated in the state of Washington. For the purposes of this DPA, Boom Learning includes any entity that directly or indirectly controls, is controlled by, or is under common control with Boom Learning.

2.3 The terms, "**Commission**" and "**Member State**" shall have the same meaning as in the GDPR, and their cognate terms shall be interpreted accordingly.

2.4 "**Contracted Processor**" means Boom Learning or a Subprocessor.

2.5 "**Control**", "**controlling**", "**controller**" and their cognates means the natural or legal person, public authority or other body, that alone or jointly with others determines the purpose and means of the processing of Personal Data.

2.6 "**Data Protection Laws**" means the data protection or privacy laws of any country, state or province to which School is properly subjected by express extension of jurisdiction.

2.7 "**Personal Data**" is any information relating to an identifiable natural person who can be directly or indirectly identified in particular by reference to an identifier, such as a name, identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. Educators are required to provide no more than a first name, and where necessary a last initial, to maximize the likelihood that the Personal Data is pseudonymized.

2.8 "**Personal Data Breach**" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, School Personal Data transmitted, stored or otherwise processed.

2.9 "**Privacy Shield**" means the EU-US Privacy Shield and Swiss-US Privacy Shield Framework self-certification program operated by the U.S. Department of Commerce and approved by

the European Commission pursuant to Decision C(2016)4176 of 12 July 2016 and by the Swiss Federal Council on 11 January 2017, respectively.

- 2.10 **"Privacy Shield Principles"** means the Privacy Shield Principles (as supplemented by the Supplemental Principles) contained in Annex II to the European Commission Decision C(2016)4176 of 12 July 2016 (as may be amended, superseded or replaced).
- 2.11 **"Processing," "process",** and their cognates means any operation or set of operations performed on School Personal Data, by automated or manual means, including, but not limited to, collection, storage, use, disclosure by transmission, erasure and destruction.
- 2.12 **"Sensitive Personal Data"**, depending on your governing jurisdiction, 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. School is solely responsible for understanding what constitutes sensitive information for School's governing jurisdiction.
- 2.13 **"School(s)"** means the legal entity, whether a nation, province or state, department, county, city, district, school, non-profit or for profit business with the legal right and authority to manage and control the Educator's use of the Personal Data to be delivered to and processed by Boom Learning. For the purposes of this DPA, the term School includes any entity that directly or indirectly controls, is controlled by, or is under common control with the School. It further incorporates any employee or independent contractor of the school.
- 2.14 **"School Personal Data"** means any Student Data that constitutes Personal Data Processed by a Contracted Processor on behalf of School in connection with the Terms of Service. The data subjects for the purposes of this DPA are any student added by a Educator at a School to a Boom Learning Educator account. The types of Student Data that might constitute Personal Data include the avatar, username, nickname, teacher name, school, grade level, decks assigned, and deck performance.
- 2.15 **"Subprocessor"** means any person engaged by Boom Learning to assist in fulfilling its obligations under the Terms of Service.
- 2.16 **"Supervisory Authority"** shall have the meaning set forth in the GDPR for EEA Schools. For Schools not located in the EEA, it shall mean the agency designed by national, state or provincial law as the appropriate supervisory authority, if any, to which a Personal Data Breach must be reported.

3. Processing and Deletion of School Personal Data

- 3.1 Boom Learning is a school official. School agrees that Boom Learning processes Student Data for the use and benefit of your School and students.
 - 3.1.1 For the avoidance of doubt, School and Boom Learning agree and acknowledge that Student Data is the property of the student. School is a custodian of Student Data acting *in parentis loci*, and Boom Learning is acting upon School's instructions with respect to the Student Data. School is responsible for obtaining the required legal right to control Student Data, whether by consent or by legal authority.

- 3.1.2 To the extent School is required to provide a student with a statement of privacy rights, School may provide Boom Learning with a copy of such statement which shall be incorporated herein by reference; provided however, that School understands that Boom Learning does not have contact information for students and that School is solely responsible for communicating such statement to students.
- 3.1.3 School shall indemnify Boom Learning for any liability arising from failure to have a legal basis to collect the School Personal Data, failure of School to obtain required consents, or failure of School to provide students, parents or legal guardians with required information regarding their rights.
- 3.2 Boom Learning shall process School Personal Data only upon School instructions and in so processing Boom Learning will comply with all applicable Data Protection Laws in the processing of School Personal Data; provided that, Boom Learning shall process School Personal data without School's documented instructions when processing is required by a law to which the relevant Contracted Processor is subject, in which case Boom Learning shall, to the extent permitted by the law, inform the School of that legal requirement before the relevant processing of that Personal Data.
- 3.3 School hereby instructs Boom Learning (and authorizes Boom Learning to instruct each Subprocessor) to process School Personal Data; and in particular, transfer School Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the Terms of Service; and warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give this instruction on behalf of each relevant School Affiliate.
- 3.4 School may revoke the instruction in Section 3.3 by (a) deleting a student, or (b) giving notice to help@boomlearning.com to delete a student or account (Boom Learning shall have 10 days upon which to confirm the identity and authority of the requestor and process such instructions). School further instructs Boom Learning to delete all students from (a) non-renewed paid memberships (such revocation becoming effective 90 days after non-renewal, and (b) unpaid accounts for which there has been no Educator login for 180 days.
- 3.5 For the avoidance of doubt, Boom Learning and School agree and restate that Boom Learning shall not use School Personal Data to (a) engage in advertising targeted to students, (b) to amass a profile based on students for uses other than furthering your and Boom Learning's shared K-12 educational purpose of identifying, assigning and recommending educational materials for personalized and adaptive learning purposes, which shall not be used to limit student learning, (c) provide, free or for a charge, identifiable student information to others, except (i) to an acquirer of the Boom Learning product assets for continuation of the Boom Learning product, (ii) to a legal, regulatory, judicial or public safety agency for a legitimate governmental purpose, and (iii) to our partners for the purpose of supporting our educational purpose (see Operations Partners in our Privacy Policy).
- 3.6 To the extent that Boom Learning processes any EEA School Personal Data in a country that has not been designated by the Commission or the Swiss Federal Data Protection Authority (as applicable) as providing an adequate level of protection for Personal Data, School agrees that Boom Learning will be deemed to provide adequate protection by virtue of having self-certified its compliance with the Privacy Shield. Boom Learning agrees to protect such

Personal Data in accordance with the requirements of the Privacy Shield Principles. If Boom Learning is unable to comply with this obligation, it will inform School.

- 3.7 For Schools not subject to the GDPR, Personal Data encompasses data that is associated with a student that may not qualify as personally identifiable information in your jurisdiction. Boom Learning and School agree that this DPA does not expand either parties' obligations to parents and student with respect to Personal Data that does not constitute personally identifiable data within the School's jurisdiction. Boom Learning does not require student personally identifiable data to serve its educational purpose.
- 3.8 School warrants and represents that School has provided notice and obtained (or will obtain) all consents from students, parents and guardians and rights necessary under Data Protection Laws for Boom Learning to process Student Personal Data and provide the Services to School. School further agrees and acknowledges that it has a responsibility to instruct its employees, contractors and affiliates to provide to Boom Learning the least amount of Personal Data about a student possible, including (a) instructing Educators not to provide Boom Learning with the full names of students, and (b) instructing its employees, contractors and affiliates not to collect Sensitive Data from students. School agrees to follow its own privacy rules, acceptable use policies, and educational records policies with respect to School Personal Data. Annex 1 provides a sample student consent template.

4. Boom Learning as Controller

- 4.1 Notwithstanding anything to the contrary in the Terms of Service, School acknowledges that Boom Learning is the Controller with respect to Educator Personal Data and will have a right to use and disclose Educator Personal Data relating to the operation, support and/or use of the Services for its legitimate business purposes, such as billing, account management, technical support, product development, sales and marketing. School agrees that any recommendations made to Educators for additional resources are to enable your school to educate and assess your students, in a manner that adapts to student learning; provided Boom Learning does not receive compensation from a third party to provide such recommendation. Boom Learning will process such Educator Personal Data in accordance with the Boom Learning Privacy Policy and any applicable laws.

5. Personnel

- 5.1 Boom Learning shall take reasonable steps to ensure the reliability of any of its employees, agents or independent contractors who may have access to the School Personal Data, ensuring that access is strictly limited to those individuals who need to know/access the relevant School Personal Data, ensuring that all such individuals are subject to obligations of confidentiality.
- 5.2 School agrees to take reasonable steps to ensure the reliability of any of its employees, agents or independent contractors who may have access to the School Personal Data, ensuring that access is strictly limited to those individuals who need to know/access the relevant School Personal Data, ensuring that all such individuals are subject to obligations of confidentiality.
- 5.3 School agrees that any regulatory penalties or other liability incurred by Boom Learning in relation to the School Personal Data that arise as a result of, or in connection with, School's failure to comply with its obligations under this Section 5 or any applicable Data Protection

Laws will count toward and reduce Boom Learning's liability to School under the Terms of Service.

6. Subprocessing and Subprocessors

- 6.1 School agrees that Boom Learning may engage Subprocessors to process School Personal Data on School's behalf. Boom Learning provides a list of Subprocessors it has appointed in its Privacy Policy. School may request a up-to-date list upon written request to help@boomlearning.com.
- 6.2 Boom Learning will notify School via newsletter or similar message if it adds a Subprocessor at least ten (10) days prior to any such changes.
- 6.3 School may object in writing to Boom Learning's appointment of a new Subprocessor within five (5) days of such notice, provided that such objection is based on reasonable grounds relating to data protection. In such event, the parties will discuss such concerns in good faith with a view to achieving resolution. If a resolution is not achieved within a reasonable amount of time, School may terminate the Services that cannot be provided to School by Boom Learning without the use of the now objected-to new Subprocessor, by providing notice to Boom Learning.
- 6.4 With respect to each Subprocessor, Boom Learning will enter into a written agreement with the Subprocessor imposing data protection terms that require the Subprocessor to protect the School Personal Data to the standard required by the Data Protection Laws; and
 - 6.4.1 before a Subprocessor first Processes School Personal Data, Boom Learning will carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for School Personal Data required by the Terms of Service;
 - 6.4.2 provide to School for review such copies of the Contracted Processors' agreements with Subprocessors (which may be redacted to remove confidential commercial information not relevant to the requirements of this DPA) as School may request from time to time; and
 - 6.4.3 remain responsible for its compliance with the obligations of this DPA and for any acts or omissions of the Subprocessor that cause Boom Learning to breach any of its obligations under this DPA.

7. Security and Audits

- 7.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Boom Learning shall in relation to the School Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk of a Personal Data Breach. Boom Learning's security standards are described in the Terms of Service. These standards may be updated from time to time, provided that such updates and modification do not degraded the overall security of the Services purchased by School.

- 7.2 Boom Learning engages in privacy and security by design and conducts annual audits of its security practices. Access to Student Personal Data in the form of specific answers to questions is only accessible through authenticated and confirmed Educator accounts. Authenticated data exchanges are transported using HTTPS over Transport Layer Security (TLS), which provides encrypted data transmission.
- 7.2.1 The servers, storage, backups and networks paths used in the delivery of the service are based in the United States, except and to the extent that a Subprocessor provides Subprocessor Services entirely within the jurisdiction in which School is located, if the School is not located in the United States.
- 7.2.2 School acknowledges and agrees that Boom Learning uses portable computers and devices to access its servers and that such portable computers and devices are secured with passcodes and passwords and are subject to remote erasure in the case of loss.
- 7.3 School agrees that School is responsible for its secure use of the Services, including providing adequate training on the use of secure authentication and providing employees with secure networks on which to use the Services.
- 7.4 Boom Learning will provide responses to all reasonable requests for information made by School, including responses to information security and audit questionnaires, provided that School will not exercise this right more than once per year. Boom Learning's answers to such responses are Boom Learning's confidential information. School agrees to hold any such answers in strictest confidence.

8. Data Subject Rights

- 8.1 Taking into account the nature of the Processing, Boom Learning shall assist School by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Schools' obligations, to respond to requests to exercise data subjects' rights under Data Protection Laws.
- 8.2 Boom Learning shall promptly notify School if any Contracted Processor receives a request regarding a data subject under any Data Protection Law in respect of School Personal Data; and ensure that the Contracted Processor does not respond to that request except on the documented instructions of School or as required by a law to which the Contracted Processor is subject, in which case Boom Learning shall to the extent permitted by the laws inform School of that legal requirement before the Contracted Processor responds to the request.

9. Personal Data Breach

- 9.1 Boom Learning shall notify School without undue delay, and within 72 hours of determining that a Personal Data Breach affecting School Personal Data has occurred, providing School with sufficient information to allow School to meet any obligations to report or inform data subjects of the Personal Data Breach under the Data Protection Laws, including an assessment of the risk to the rights and freedoms of natural persons. As Boom Learning does not have information permitting it to personally identify and communicate directly with students, School, as the data controller, shall be responsible for informing students of a Personal Data Breach that poses a high risk to the rights and freedoms of the students.

- 9.2 If the specific jurisdiction in which School is based requires a shorter notification period, School shall enter such period on the Signature page along with the regulatory authority for such shorter period. Boom Learning shall initial to indicate acceptance of such shorter period or shall reject the term and School may terminate the Terms of Service.
- 9.3 Boom Learning shall co-operate with School and take such reasonable commercial steps as are directed by School to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

10. Return and Cooperation

- 10.1 The Services provide School with a number of controls that may be used to retrieve, correct, delete, or restrict Personal Data, which School may use to assist it in connection with obligations under the Data Protection Laws including, but not limited to, obligations to respond to requests from students or parents or applicable data protection authorities. Parents access Student Personal Data through the student dashboard. Parents can print Student Personal Data or save it as a .pdf.
 - 10.1.1 To the extent School is unable to independently access the relevant Personal Data within the Services, Boom Learning will provide reasonable cooperation to assist School to respond to any requests from individuals or applicable data protection authorities relating to the processing of Personal Data.
 - 10.1.2 If the tools provided are not sufficient for its needs, School may make a written request for a machine readable dump of School Personal Data.
 - 10.1.3 In the event a request to access data is made directly to Boom Learning, Boom Learning will direct the requestor to School and will not take action without School's prior authorization, unless legally compelled to do so. If Boom Learning is legally required to respond to such a request, Boom Learning will promptly notify School and provide School with a copy of the request unless legally prohibited from doing so. Providing such notice may involve providing the legal authority with the School's basic contact information.
- 10.2 To the extent that a School is required under a Data Protection Law to carry out a data protection impact assessment or prior consultation with a data protection supervisory authority, Boom Learning will provide reasonably requested information.

11. General Terms

- 11.1 School may, by at least 30 (thirty) calendar days' written notice, propose modifications to this DPA which School reasonably considers to be necessary to address the requirements of any Data Protection Law.
 - 11.1.1 If School gives notice under section, 11.1, School shall not unreasonably withhold or delay agreement to any consequential modifications to this DPA proposed by Boom Learning to protect the Contracted Processors against additional risks associated with the modifications requested.
 - 11.1.2 If School gives notice under section 11.1, the parties shall promptly discuss the proposed modifications and negotiate in good faith with a view to agreeing and

implementing those or alternative modifications designed to address the requirements identified in School's notice as soon as is reasonably practicable.

- 11.2 As a penalty for Boom Learning's noncompliance with its obligations under this DPA, School may terminate its relationship with Boom Learning and demand refund of all unredeemed purchased points.
- 11.3 Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA 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.
- 11.4 Any version of this Agreement in a language other than English is provided for convenience and the English language version will control if there is any conflict. Given the importance of this Agreement, we encourage you to study it carefully.

BINDING SIGNATURES

By the signatures below, this DPA is entered into and becomes a binding part of the Terms of Service. This agreement must be signed by an individual with the legal right and authority (the "**Authorized Signatory**") to act on behalf of and to bind the School, such as a governing district authorized signatory, a school authorized signatory, or a business owner or officer. By completing this section, the Authorized Signatory warrants and represents that he or she has the authority (a) to sign on behalf of the School, pursuant to a policy adopted by your School's governing board or body, to contract with Boom Learning and (b) to bind its teachers, staff and other entities who control Personal Data under School's supervision and direction.

	Boom Learning	School
Signature	<i>Mary Oemig</i>	
Entity Name	Omega Labs Inc. dba Boom Learning	
Name	Mary Oemig	
Title	Chief Operations Officer and General Counsel	
Date Signed	May 18, 2018	
Address	9805 NE 116 th ST STE 7198 Kirkland WA 98034 United States	
Data Breach Notification Period	72 hours from determining a Personal Data Breach has occurred	
Jurisdiction & Applicable Laws	United States State of Washington	
Attachments	N/A	

ANNEX 1

SAMPLE OPT-IN CONSENT

You can find the sample opt-in consent form at:

<https://boomlearning.freshdesk.com/support/solutions/articles/16000078606-boom-learning-opt-in-permission-slip>