# boomlearning

## Data Protection and Security Addendum for Data Exporters ("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: 1 October 2020*
*Effective Date: When Signed and Delivered to Boom Learning*

**"Data Exporter":** _Berlin Public Schools_

Address: _238 Kensington Road_

City, State/Province, Postal Code: _Berlin CT 06037_

Country/Member State: _USA_     Telephone: _860-829-6781_

Fax: _____     E-Mail: _cszymanski@berlinschools.org_

Data Exporter Primary Contact Name: _CRAIG SZYMANSKI_

Applicable Data Laws (enter the laws that apply to Data Exporter):

_Connecticut PA 16-189_

**"Data Importer": Omega Labs Inc. dba Boom Learning, a WA state corporation**

Address: 9805 NE 116th ST #7198 Kirkland WA 98034. Telephone: +1833969266

E-mail: legal@boomlearning.com, sales@boomlearning.com, help@boomlearning.com

## ADDENDUM TERMS

This DPA supplements and forms part of the Terms of Service (which include the Boom Learning Privacy Policy and Cookie Policy) (the **"terms"**) between Data Exporter and Data Importer. In consideration of the mutual obligations set out herein, the parties agree to amend and add to those terms the terms and conditions of this DPA to ensure adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the Data Exporter to the Data Importer of the data described herein. Nothing in this DPA reduces the Data

Importer's obligations under the terms in relation to the protection of Personal Data or permits the Data Importer to process (or permit the processing of) Personal Data in a manner which is prohibited by the terms. 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.

## 1. Definitions

1.1 **"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 means ownership, voting or similar supervisory legal authority.

1.2 **"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.

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

1.4 **"Contracted Processor"** means Data Importer or a Subprocessor.

1.5 **"Data Exporter"** means the controller, whether a nation, province or state, department, county, city, district, school, non-profit or for profit business or individual with the legal right and authority to manage and control and transfer the Personal Data to be delivered to and processed by the Data Importer, including any entity that directly or indirectly controls, is controlled by, or is under common control with the Data Exporter, and any employee or independent contractor of thereof.

1.6 **"Data Importer"** means the processor who agrees to receive from the data exporter personal data intended for processing on the data exporter's behalf after the transfer in accordance with the data exporter's instructions and the terms of this agreement; and further, for customers based in the European Economic Area ("EEA"), who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 96/46/EC;

1.7 **"Data Protection Laws"** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the country in which the Data Exporter is established, which have been specified above.

1.8 **"Personal Data"**, "process/processing", "controller", "processor," "data subject" and "supervisory authority" shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; except that for customers in Canada, "Personal Data" shall mean personally identifiable User Data and supervisory authority shall mean the provincial or national authority as applicable.

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

1.10 **"Special Categories of Data"** includes racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, data concerning health, data concerning a natural person's sex life or sexual orientation, the processing of genetic data, and the biometric data for the purchase of uniquely identifying a natural person.

1.11 **"Subprocessor"** means any person engaged by Data Importer or by any other sub-processor of Data Importer who agrees to receive from the Data Importer, or from any other sub-processor of the Data Importer, Personal Data exclusively intended for processing activities to be carried out on behalf of the Data Exporter after the transfer in accordance with the Data Processor's instructions, the terms of the DPA and the terms of the written subcontract.

1.12 **"Security measures"** means the technical and organizational measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. The security measures are specified in the Privacy Policy.

## 2.  Details of the Transfer

2.1 Data Importer provides a platform as a service that allows Data Exporters to create, buy, and sell self-grading teaching resources (**"Boom Cards"** and share information about those resources with other adults; to assign those resources to students; and to obtain reports on student performance (the **"Student Data"**).

2.2 Data Exporter assigns educational or education-related intervention resources to students residing in the Country indicated. Data Exporter is subject to regulations for international transfers of Personal Data.

2.3 Data Subjects are the Data Exporters themselves (as identifying information is required for student security) and the students for whom they create accounts.

2.4 The categories of data to be transferred are specified in <u>Data Elements</u>, as selected by Data Exporter if optional. Data in the specification that are not optional are data that are essential to provide the service.

2.5 Some Data Exporters process data for the special category of health data for the necessary purposes of occupational, speech, and related intervention and treatment therapies. All such exporters agree that they are under contract with the Data Subject and that such contract obligates the Data Exporter to secrecy. All such Data Exporters must use Private settings for Classes and may not distribute classroom logins. All such Data Exporters must actively use deletion when storage of the health data is no longer necessary.

2.6 The Personal Data transferred is subject to collection, recording, and storage by the Data Importer and its subprocessors. The Data Exporter may instruct the Data Importer, and its subprocessors, to retrieve and transmit the data to Data Exporter and/or the Data Subject. The Personal Data is subject to erasure and destruction by the Data Exporter by taking an affirmative action, or by Data Importer where the Data Exporter fails to maintain the account.

**3.    Third Party Beneficiaries**

3.1    The data subject can enforce against the Data Exporter Sections 3, 4.2 through 4.10, 5.1 through 5.5, 5.7 through 5.10, 6.1 and 6.2, 7, 8,2, and 9 through 12 as third-party beneficiary.

3.2    The data subject can enforce against the Data Importer Sections 3, 5.1 through 5.5, 5.7, 6, 7, 8.2, and 9 through 12, in cases where the Data Exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity.

3.3    The data subject can enforce against a subprocessor Sections 3, 4.1 through 5.5, 5.7, 6, 7, 8.2, and 9 through 12, in cases where both the Data Exporter and the Data Importer have factually disappeared or has ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the Data Exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the terms.

3.4    The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

**4.    Data Exporter Obligations:** Data Exporter agrees and warrants:

4.1    That the processing, including the transfer itself, of the Personal Data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities where the Data Exporter is established) and does not violate the relevant provisions of that country;

   4.1.1    Data Exporter agrees that Boom Learning processes Student Data for the use and benefit of Data Exporter and the students served by Data Exporter. Data Exporter agrees and acknowledges that Student Data is the property of the data subject.

   4.1.2    Data Exporter warrants and represents that Data Exporter has provided notice and obtained (or will obtain) all consents required by the applicable data protection law from students, parents and guardians and rights necessary for Data Importer to process Personal Data and provide the Services. Data Exporter further agrees and acknowledges that it has a responsibility to instruct its employees, contractors and affiliates to provide to Data Importer the least amount of Personal Data about a data subject possible. Data Exporter agrees to follow its own privacy rules, acceptable use policies, and educational and health records policies with respect to Personal Data.

   4.1.3    Data Exporter shall indemnify Data Importer from any liability arising from failure to have a legal basis to collect the Personal Data, failure of Data Importer to obtain required consents, or failure of Data Importer to provide students, parents or legal guardians with required information regarding their rights.

4.2     that it has instructed and throughout the duration of the Personal Data processing services will instruct the Data Importer to process the personal data transferred only on the Data Exporter's behalf and in accordance with the applicable data protection law and the terms;

   4.2.1     Data Exporter hereby instructs Data Importer, and authorizes Data Importer to instruct each Subprocessor, to process Personal Data; and in particular, transfer Personal Data to any country or territory, as reasonably necessary for the provision of the Services and consistent with the terms; 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 Affiliate;

   4.2.2     Data Exporter may revoke the instruction in Section 3.6 by (a) deleting Personal Data, 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). Data Exporter further instructs Data Importer 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.

   4.2.3     Data Importer may process Personal Data without Data Importer's documented instructions when processing is required by a law to which the relevant process is subject, in which case, Data Importer shall, to the extent permitted by law, inform the Data Exporter before the relevant processing of that Personal Data.

4.3     that the Data Importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in the Privacy Policy;

4.4     that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

4.5     that it will ensure compliance with the security measures;

4.6     that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country, with the further requirement for EEA Customers of informing the data subject that the third country does not provide adequate protection within the meaning of Directive 95/46/EC;

4.7     to forward any notification received from the Data Importer or any sub-processor pursuant Section 5.2 and Section 8.3 to the data protection supervisory authority if the Data Exporter decides to continue the transfer or to lift the suspension;

4.8     to make available to the data subjects upon request a copy of the terms, including this DPA, as well as a copy of any contract for sub-processing services which has to be made in accordance with the DPA;

4.9 that, in the event of sub-processing, the processing activity is carried out in accordance with Section 11 by a sub-processor providing at least the same level of protection for the Personal Data and the rights of data subject as the data importer under the terms; and

4.10 that it will ensure compliance with this Section 4.

5. **Data Importer Obligations:** Data importer agrees and warrants:

5.1 To process the Personal Data only on behalf of the Data Exporter and in compliance with Data Exporter's instructions and the terms; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the Data Exporter of its inability to comply, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract.

5.2 That it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the Data Exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the terms, it will promptly notify the change to the Data Exporter as soon as it is aware, in which case the Data Exporter is entitled to suspend the transfer of data and/or terminate the contract;

5.3 that it has implemented the technical and organisational security measures specified in the Privacy Policy before processing the personal data transferred;

5.4 that it will promptly notify the Data Exporter about:

5.4.1 any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;

5.4.2 any accidental or unauthorised access; and

5.4.3 any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

5.5 to deal promptly and properly with all inquiries from the Data Exporter relating to its processing of the Personal Data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

5.6 at the request of the Data Exporter to submit its data-processing facilities for audit of the processing activities covered by the terms which shall be carried out by the Data Exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the Data Exporter, where applicable, in agreement with the supervisory authority;

5.7 to make available to the data subject upon request a copy of the terms, or any existing contract for sub-processing, unless the terms or contract contain commercial information, in which case it may remove such commercial information;

5.8 that, in the event of subprocessing, it has previously informed the Data Exporter and obtained its prior written consent; Data Exporter is deemed to have consented to any subprocessor listed in the Privacy Policy on the data this DPA is signed.

5.9     that the processing services by the subprocessor will be carried out in accordance with Section 11;

5.10     to make available promptly a copy of any subprocessor agreement it concludes under the terms to the Data Exporter, through links available in the Privacy Policy.

## 6.     Liability

6.1     The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Section 3 or in Section 11 by any party or sub-processor is entitled to receive compensation from the Data Exporter for the damage suffered.

6.2     If a data subject is not able to bring a claim for compensation in accordance with 6.1 against the Data Exporter, arising out of a breach by the Data Importer or its sub-processor of any of their obligations referred to in Section 3 or in Section 11, because the Data Exporter has factually disappeared or ceased to exist in law or has become insolvent, the Data Importer agrees that the data subject may issue a claim against the Data Importer as if it were the Data Exporter, unless any successor entity has assumed the entire legal obligations of the Data Exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

6.3     If a data subject is not able to bring a claim against the Data Exporter or the Data Importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Section 3 or in  Section 11 because both the Data Exporter and the Data Importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the DPA as if it were the Data Exporter or the Data Importer, unless any successor entity has assumed the entire legal obligations of the Data Exporter or Data Importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the terms.

## 7.     Mediation and Jurisdiction

7.1     The Data Importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the DPA, the Data Importer will accept the decision of the data subject:

        7.1.1     to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

        7.1.2     to refer the dispute to the courts in the country in which the data exporter is established.

7.2     The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## 8.     Cooperation with supervisory authorities

8.1   The Data Exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2   The parties agree that the supervisory authority has the right to conduct an audit of the Data Importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the Data Exporter under the applicable data protection law.

8.3   The Data Importer shall promptly inform the Data Exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 8.2. In such a case the data exporter shall be entitled to take the measures foreseen in Section 5.2.

## 9.   Governing Law

9.1   The terms shall be governed by the law of the Country/Member state in with the Data Exporter is established as stated in the DPA header.

## 10.   Variation of the contract

10.1   The parties undertake not to vary or modify the terms of the DPA. This does not preclude the parties from adding clauses on business related issues where required so long as a they do not contradict the DPA.

## 11.   Subprocessing

11.1   The Data Importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the DPA without the prior written consent of the Data Exporter, such consent being given to all subprocessors listed in the Privacy Policy on the date of the DPA. Where the data importer subcontracts its obligations under the terms, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the DPA. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the Data Importer shall remain fully liable to the Data Exporter for the performance of the subprocessor's obligations under such agreement.

11.2   The prior written contract between the Data Importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Section 3 for cases where the data subject is not able to bring the claim for compensation referred to in Section 6.1 against the Data Exporter or the Data Importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the terms.

11.3   The provisions relating to data protection aspects for subprocessing of the contract referred to in 11.1 shall be governed by the law of the Country/Member State in which the Data Exporter is established, as specified in this DPA header.

11.4 The Data Exporter shall keep a list of subprocessing agreements concluded under the DPA and notified by the Data Importer pursuant to Section 5.10, which shall be updated at least once a year. The list shall be available to the Data Exporter's data protection supervisory authority.

## 12. Obligation after the termination of Personal Data processing services

12.1 The parties agree that on the termination of the provision of data-processing services, the Data Exporter shall use the self-help tools provided by Data Importer to export and/or delete all the Personal Data transferred and the copies thereof to the Data Exporter. Upon receipt of such instructions Data Importer will destroy the Personal Data and instruct subprocessors to so destroy the Personal Data. Data Exporter may ask Data Importer to certify to the Data Exporter that it has done so, provided that no such certification shall issue unless Data Exporter uses the self-help tools or, if assistance is required, has cooperated with Data Importer to identify the Personal Data to be deleted and destroyed. If legislation imposed upon the Data Importer prevents it from returning or destroying all or part of the Personal Data transferred, Data Importer warrants that it will guarantee the confidentiality of the Personal Data transferred and will not actively process the Personal Data transferred anymore.

12.2 The Data Importer and the subprocessor warrant that upon request of the Data Exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 12.1.

## 13. Data Importer as Controller

13.1 Notwithstanding anything to the contrary in the terms, Data Exporter acknowledges that Data Importer 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. Data Exporter 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 Data Importer does not receive compensation from a third party to provide such recommendation. Data Importer will process such Educator Personal Data in accordance with Data Importer's Privacy Policy and any applicable laws.

Signed:

for Data Exporter: _____

Name and Title: ERIN MCGURK ASSISTANT SUPERINTENDENT Date: 1/21/2021

for Data Importer (Omega Labs Inc.): Mary E. Oemig _____

Mary Oemig, President