boomlearning

Standard Terms Addendum for Government Entities ("Terms Addendum")

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

regarding terms applicable to government entities

Version Date: 1 October 2020
Effective Date: When Signed and Delivered to Boom Learning

"**Government Entity**": _____

Address: _____

City, State, and Zip _____

Telephone: _____ Fax: _____ E-Mail: _____

Primary Contact Name: _____

Primary Contact Title: _____

Primary Contact Telephone Number: _____

Primary Contact Email: _____

Authorized Representative's Signature: _____ **SIGN HERE**

Effective Date: _____ Expiration Date (see 4.1.1.):_____

The following titled documents are incorporated herein by reference (examples include a Parent's Bill of Rights, state Privacy Pledge, etc):

[ ]

By the signatures herein, this Addendum 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 Government Entity, such as a governing district authorized signatory, a Government Entity 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 Government Entity, pursuant to a policy adopted by your Government Entity's governing board or body, to contract with Boom Learning and (b) to bind its teachers, staff and other entities who control Protected Data.

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

Authorized Representative's Name and Title: Mary Oemig, President

Authorize Representative's Signature: _____

ADDENDUM 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. By signing and returning this agreement, the authorized representative of the Government Entity warrants and represents that it is a "Government Entity." Any Terms Addendum signed and returned to Boom Learning by a party that is not a Government Entity is null and void.

1.2 This Addendum supersedes any conflicting terms in the Boom Learning Terms of Service, Boom Learning Privacy Policy, any documents incorporated therein by reference, and any Purchase Order or other Terms and Conditions supplied by Government Entity. Any separate data privacy agreement or rider signed by the parties shall prevail over the terms of this Addendum in the event of a conflict.

2. **Applicable Laws and Dispute Resolution.**

2.1 Applicable "**Data Protection Laws**" the following state and local government data privacy laws, regulations and ordinances applicable to Government Entity and which define the "**Protected Data**" (all Student Data and any subcategories of Educator Data specifically addressed by the laws below):

2.2 Section A.3 of the Terms of Service regarding Arbitration is modified as follows

    2.2.1 Strike A.3.1, A.3.2, A.3.3 and A.3.5 and replace with: "If we have a falling out, before resorting to formal legal action, we shall attempt in good faith to resolve all disputes by negotiation between representatives with the authority to settle the controversy. If negotiations do not resolve the matter, and if the total amount in controversy is less than $100,000, the matter will proceed to mediation to be conducted online through JAMSconnect. If mediation is unsuccessful in resolving the dispute or the matter has a total value greater than $100,000, then the parties may proceed with formal legal action."

2.2.2 The governing law for formal legal action shall the be the governing law of the address of the Government Entity.

2.2.3 The venue for formal legal action shall be _____. In the absence of a venue indication, venue shall be in the courts of King County in the State of Washington.

3. **Indemnification and Reimbursement.** The following provision is added:

3.1.1 Boom Learning agrees to indemnify and hold harmless Government Entity for the damages and costs arising out of any negligence, gross negligence or willful misconduct attributable to Boom Learning, its agents and employees concerning Protected Data. Such costs include reimbursing the costs of providing breach notifications attributable to such negligence or misconduct on the part of Boom Learning. Boom Learning shall maintain cyber liability insurance.

4. **Protection, Processing and Deletion of Protected Data**

4.1 Contractor 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 Addendum. 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 Deletion

4.2.1 This agreement will terminate on the last expiration date of accounts purchased by Government Entity or on the date in the header whichever is sooner. In the event Government Entity enters a date in the header, Government Entity is responsible for contacting Boom Learning 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, Government Entity is responsible for instructing its users to cease using Boom Learning in a manner that collects Protected Data on expiration of the Addendum.

4.2.2 At all times, Boom Learning provides 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 progess. In the event Government Entity is unable to issue instructions using the provided self-help tools, Government Entity may contact Boom Learning to perform deletion or export.

4.2.3 Upon termination and deletion, neither Boom Learning nor any of its subcontractors or other authorized persons or entities to whom it has disclosed will retain deleted data on any storage medium whatsoever. Upon request, Boom Learning and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Government Entity with a certification from an appropriate officer that these requirements

have been satisfied in full. Such certification will not be issued if Government Entity has taken no steps to use the self-help tools and nor will it issue if Entity fails to cooperate in identifying data to be certified as deleted.

4.2.4 Boom Learning conducts routine data sweeps that result in the deletion of unused accounts and stale Protected Data as described in its Privacy Policy. Nothing in this Addendum shall prevent Boom Learning from conducting those data deletion sweeps.

5. Audits

5.1 Boom Learning 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. Boom Learning's answers to such responses are Boom Learning's confidential information. Government Entity agrees to hold any such answers in strictest confidence. Such audits are subject to reasonable time and manner restrictions. Boom Learning will cooperate reasonable with any state or federal agency with oversite authority or jurisdiction in connection with any audit or investigation of Boom Learning and/or the delivery of the services. Boom Learning will provide reasonable access to its facilities, staff and agents and the Student Data to verified agents of Government Entity.

6. **Data Breach**

6.1 The time frame for notification of Government Entity shall be reduced from 7 days to _____ (not less than 48 hours and only with a statutory mandate). The statutory mandate for such shorter term is:

6.2 Where Government Entity has not provided Boom Learning with contact information for data subjects, Government Entity shall be responsible for notifying data subjects. Such notification shall be at Boom Learning's expense solely where the breach is attributable to the conduct of Boom Learning's employees, agents or subprocessors.

6.3 Boom Learning 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 such Protected Data Breach, provided that Government Entity shall reimburse Boom Learning for expenses arising from a breach attributable to Government Entity's employees and agents.

6.4 After informing Government Entity of a breach, Boom Learning _____ may _____ may not report a breach directly to the applicable state regulators. If Government Entity checks "may not", Government Entity agrees to indemnify and hold Boom Learning harmless from any fines, fees, or liabilities assessed against Boom Learning for not reporting the breach. Where this paragraph is inconsistent with state and local law, Boom Learning may report the breach directly to the applicable state regulators with no liability to Government Entity and without breaching this agreement, regardless of whethere or not Government Entity checked "may".

6.5   In the event a request to access data is made directly to Boom Learning, Boom Learning will direct the requestor to Government Entity and will not take action without Government Entity'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 Government Entity and provide Government Entity with a copy of the request unless legally prohibited from doing so. Providing such notice may involve providing the legal authority with the Government Entity's basic contact information.

7.   General Terms

7.1   As a penalty for Boom Learning's noncompliance with its obligations under this Addendum, Government Entity may terminate its relationship with Boom Learning and demand refund of all unredeemed purchased points.

7.2   Should any provision of the agreement be invalid or unenforceable, then the remainder of this Ad 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.

7.3   Notices shall be sent to the person indicated in the header.