



**Data Protection and Security Addendum for non-EEA 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 July 2021*

*Effective Date: When Signed and Delivered to Boom Learning*

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**“Data Exporter/Controller”:** \_\_\_\_\_

Address: \_\_\_\_\_

City, Province, Postal Code: \_\_\_\_\_

Country: \_\_\_\_\_

Data Exporter Primary Contact Name: \_\_\_\_\_

Data Exporter Primary Contact Title: \_\_\_\_\_

E-mail: \_\_\_\_\_ Telephone: \_\_\_\_\_

Activities relevant to the data transferred under these clauses: collection, recording, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data for an education purpose.

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

**“Data Importer/Process”: Omega Labs Inc. dba Boom Learning, a WA state corporation**

Address: 9805 NE 116<sup>th</sup> ST #7198 Kirkland WA 98034. Telephone: +18339692666

Contact: Mary Oemig, CEO and General Counsel

E-mail: [legal@boomlearning.com](mailto:legal@boomlearning.com)

Activities relevant to the data transferred under these clauses: collection, recording, structuring, storage, retrieval, disclosure by transmission, dissemination or otherwise making available, erasure or destruction of personal data for an education purpose.

Signed:

Data Importer (Omega Labs Inc.)  
Mary Oemig, CEO *Mary E. Oemig*

## DESCRIPTION OF TRANSFER

Transfer controller to processor of student data regarding data subjects enrolled in pre-school, primary, or secondary levels. The data elements and their categories so transferred are listed here:

<https://help.boomlearning.com/en/support/solutions/articles/16000087842-data-elements>.

Transfer is as directed by the controller to the data subject, which may be one-off or continuous for the purpose of measuring student progress on educational activities and to return the results of such activities to the controller for the making of educational process decisions. Processing may include customer support for the controller and validation of the legitimacy of the controller to send the personal information of the data subject for processing. Further transfers to subprocessors are detailed here:

<https://help.boomlearning.com/en/support/solutions/articles/16000121757-subprocessor-disclosure>.

## ADDENDUM TERMS

### **A. Supplemental and Superseding 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.

### **B. Purpose and Scope**

The purpose of this agreement is to ensure compliance for our non-EU customers subject to a regime that requires a written agreement for data export of the data of natural persons.

### **C. The Parties**

The Parties are

1. The “**data exporter**” is the entity listed on the title page, which is the natural or legal person, public authority, or other body transferring the personal data of a data subject; and
2. The “**data importer**” is Boom Learning, a doing business name of Omega Labs Inc., a United States C Corporation, incorporated in the state of Washington. The data importer is the entity, along with its subprocessors, receiving data in the United States from the data exporter.

### **D. Definitions**

Items not defined here shall have the meaning defined in the Boom Learning Terms of Service and/or Privacy Notice.

“**Contracted Processor**” means Data Importer or a Subprocessor.

“**Data Exporter**” means the controller, whether an natural or legal person 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.

**“Data Importer”** means the Boom Learning, 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;

**“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.

**“Personal Data”**, shall mean the personally identifiable data of a natural person or information linked to the personally identifiable information of a natural person.

**“Process/processing”** shall mean the executing of actions on data at the instruction of a controller. **“Controller/controlling”** means making determinations about whom and which data to collect about natural persons.

**“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.

**“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 [Information Security Plan](#).

## **E. Details of the Transfer**

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”).

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.

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

The categories of data to be transferred are specified in the [Data Elements](#), as selected by the Data Exporter if optional. Data listed in Data Elements that are not identified as option are data that are essential to provide the service.

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.

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.

#### **F. Warranties and Covenants of Data Exporter**

Data Exporter agrees and warrants:

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;

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.

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.

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.

Data Exporter agrees 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.

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;

Data Exporter may revoke the instruction in Section 3.6 by (a) deleting Personal Data, or (b) giving notice to [help@boomlearning.com](mailto: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.

That Data Importer may process Personal Data without Data Exporter'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.

That is consents to the delegation of duties to the [disclosed subprocessors](#).

#### **G. Warranties and Covenants of Data Importer**

Data importer agrees and warrants:

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.

That it has implemented the technical and organizational security measures specified in the [Information Security Plan](#) before processing the personal data transferred.

That it will promptly notify the Data Exporter about any legally binding request for disclosure of the personal data by (1) a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; (2) any accidental or unauthorized access; and (3) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorized to do so.

#### **H. Governing Law**

The terms shall be governed by the law of the Country in which the Data Exporter is established as stated in the header of this DPA.