

Entity Terms of Service

Effective date June 1, 2023 (archived version available in FAQs)

1. You must sign and return to be bound by this agreement!

This is an alternative version of the Terms of Service for Government Entities (the “**Entity Terms**”). To adopt, complete the fields and have a person with authority to bind the school sign and return it to legal@boomlearning.com. At our option, we may accept these terms for non-Government entities, but such agreements are not accepted until you receive a written confirmation of acceptance from us.

1.1 The terms that apply to you.

The Notices and Terms are listed in the order of precedence. That means that if there is a conflict between the terms of one or more documents, the term in the document on the list with the lower numeral will prevail over the terms with a higher numeral.

1.1.1 Students

1. Benefit from our [Kid-Friendly Privacy Notice](#)
2. Student accounts are subsidiaries of Entity accounts.

1.1.2 Government Entities purchasing under these Entity Terms.

1. Any separately signed privacy agreement;
2. These Entity Terms;
3. The Boom Learning [Privacy Notices](#);
4. Any Entity-provided Purchase Order Terms and Conditions.

1.2 Changes; Term; and Termination

We update our Entity Terms effective each July 1. We will notify you via our newsletter service if we make material changes. The term of our agreement is determined by the table below:

Dated Signed	Date Expires
Between June 1 and December 31 of any calendar year.	June 30 of the subsequent calendar year (6-12 months)
Between January 1 and May 31 of any calendar year.	June 30 of the subsequent calendar year (13 18 months)

You will also be required to send a renewal agreement when your Entity Terms expire. You may download and send the renewal Entity Terms as early as June 1 of each calendar year. If any term is held unlawful, void, or unenforceable for any reason, it will be considered modified so that its purpose and the remaining terms can be lawfully enforced.

As a penalty for our noncompliance with our obligations under the Entity Terms, the Entity may terminate its relationship with us for cause in writing. The termination for cause may demand a refund of all

unredeemed purchased points and a pro-rata refund of the remaining portion of annual subscriptions paid. The termination for cause shall be effective on either the delivery of the notice by email to legal@boomlearning.com or the delivery by certified mail to our address in Section 1.3.

1.3. Who we are and how to reach us

We (also “our” and “us”) are Omega Labs Inc. dba Boom Learning and our successors, assigns, and subsidiaries. Legal notices must be sent to 9805 NE 116th St Suite 7198, Kirkland WA 98034 or legal@boomlearning.com.

1.4 Who you are

You are a local, state or provincial, federal or national governmental unit supervised by an elected person or body. You are identified as

Your Legal Name	
Your Doing-Business-As Name if Any	
Your Nationality of Formation	
Your State or Province	
Your County, Parish	
Your Postal Code	
Your City	
Your Street Address	
Entity Signatory Name and Title	
Entity Legal Point of Contact Name & Title	
Entity Legal Point of Contact Email, Phone and Notice Address	
Entity Billing Point of Contact Name & Title	
Entity Billing Point of Contact Email, Phone and Billing Address	
Entity Account Administrator Name & Title	
Entity Account Administrator Email & Phone	
Type of Entity (City, School Board, Etc.)	
<i>Signatory Signature</i>	
<i>Date Signed</i>	

The Entity signatory warrants and represents that they have the authority to sign and bind the Entity, pursuant to a policy adopted by the Entity's governing board or body, to these Entity Terms, and to bind the Educators, staff, agents, and employees of the Entity to the Entity Terms.

1.5 What we are

Boom Learning

- gives you a platform at [wow.boomlearning.com](https://www.wow.boomlearning.com) for creating interactive, self-grading teaching resources ("**Boom Cards**"), including the ability to incorporate "assets", such as images, artwork, fonts, video, and sound, into those Boom Cards, (the creation platform is called the "**Studio**");
- includes a Boom Cards and asset "**Store**";
- provides educator tools for managing and assigning Boom Cards ("**Classes**") and reviewing student performance ("**Reports**"); and
- offers web apps (<https://boom.cards>) and native apps (Amazon, the App Store, and Google Play) for playing Boom Cards. Mobile apps are also subject to the rules and agreements of their respective app stores.

2. Dispute Resolution

2.1 Negotiations first; Entity elected mediation second

If we have a falling out, we shall attempt in good faith to resolve all disputes by negotiations between representatives with the authority to settle the controversy. If negotiations do not resolve the matter and the total amount in controversy is less than \$100,000, upon the election of the Entity, the matter may proceed to mediation to be conducted online through JAMSconnect.

The initiation of mediation shall toll (in lay terms "pause the running of") the limitations period from the date of initiation of mediation through the date of the completion of the mediation.

2.2 Copyright Claims Board

If negotiations do not resolve the matter and the matter falls within the jurisdiction of the Copyright Claims Board, the matter will be referred to the Copyright Claims Board for resolution.

2.3 Entity Elected Arbitration or Court Action

If the matter is not resolved in mediation, the Entity may elect to initiate virtual arbitration administered by JAMS in accordance with JAMS' Streamlined Arbitration Rules and Procedures. If you are situated outside of the United States, JAMS will use the JAMS International Arbitration Rules.

2.4 Venue and Choice of Law

The laws applied will be the laws of the country, state or province, county or parish, and city of the Entity. The Venue of any action will be the City, County or Parish, State or Province of the Entity. If the Entity fails to list a state or province, the venue and choice of law shall be King County in the state of Washington.

3. Acceptable Use Policy

3.1 Key acceptable use policy requirements

We require all Entity staff to follow these rules. We do our best to provide the information you need to follow them. We will tell you if you make a mistake. We expect you to fix your mistake if we tell you that you need to. Entity staff must

- only disclose the private information of others that staff have a right to disclose and only to authorized persons;
- only incorporate the intellectual property of others into materials staff makes with permission;
- give credit where required to give credit;
- comply with all applicable laws that apply;
- access Boom Learning only through pages we make publicly available using authorized login credentials;
- ensure messages and electronic instructions delivered to us do not include malicious code or otherwise attack our systems;
- review all materials created, selected, shared, and delivered to students before assigning.

Do not engage in any conduct in any forum hosted by Boom Learning that is harassing, threatening, fraudulent, inappropriate, hateful, pornographic, defamatory, obscene, offensive, indecent, or unlawful (as judged by solely by us).

In addition to the above Acceptable Use policy, you must also conform to the [Instructure Acceptable Use Policy](#) for items used with Canvas. You must further follow any applicable Entity Acceptable Use policies.

3.2 Bad choices have consequences

We are not required by law to monitor our sites and apps. We do have a right to monitor our sites and apps. We may proactively disable access to content that violates applicable acceptable use policies and contact the Entity administrator(s) after doing so. We will, on request, assist Entity administrators with removing access to materials they deem inappropriate for their Entity. We reserve the right to provide information to third parties such as our authors, law enforcement, supervisory authorities, and attorneys general, to resolve claims of civil or criminal misconduct.

3.3 Videos

Boom Cards allow the embedding of videos. Our rules prohibit Public Store Boom Cards decks that contain videos that contain an advertisement or tracking cookies. If you find a deck that contains an advertisement or that is sending a tracking cookie, contact us immediately and we will correct the deck. Entity staff may create and publish decks with videos to the Entity Private store. The Entity is solely responsible for educating Entity staff on which videos may be included.

3.4 DMCA Claims

The Digital Millennium Copyright Act provides specific guidelines for reporting infringement of copyrights. If we receive a compliant DMCA claim through our [Notice and Procedure for Making Claims of Copyright Infringement](#), we will remove the items. You must follow the DMCA procedure if you wish to have us reinstate materials removed under the DMCA.

3.6 Duty to inspect

Before assigning any material, you must inspect it to ensure it is suitable for your students. If an Entity Educator acquires a material and then determines it is not suitable, you may request a refund. You will need to identify the deck title, deck author, and a brief statement of the issue with the deck. Refund requests must be within reasonable proximity of the purchase date (normally within two weeks). We will grant reasonable and timely refund requests. Content on Boom Learning is created by authors. Those authors are solely responsible for the content they make available. The responsibility for reviewing

material before assigning it is solely your responsibility. We are not responsible for the accuracy, appropriateness, lawfulness, or truthfulness of any content.

4. Talking about each other

4.1 Giving credit

Please talk about Boom Cards. Be sure to give credit where credit is due. If something is not yours, don't claim it is. If Entity Educators posts images of Boom Learning or Boom Cards on media available to the public, you grant us and the author the right to repost the image with credit given to the Entity.

4.2 Feedback and ratings

We and our authors may freely use any suggestions, ideas, or other feedback you give. Freely means without restriction and without owing you money or compensation. Ratings you give must be based on using the resource for its intended purpose.

4.3 Boom learning names and logos

Boom Learning names and logos are the trademarks, trade names, and/or service marks of Boom Learning. Our authors' names and logos are the trademarks, trade names, and/or service marks of our authors. You may use our names to describe us in reviews. Use of Boom Learning and Boom Cards names and logos must comply with our guidelines. For all other uses, ask for written permission from us or our authors first. Boom Learning grants Entity the right to use our logos on Entity sites to communicate the use of our product to families and the general public.

4.4 Entity images or likenesses

You agree that Boom Learning may use the Entity as a business reference.

You

☐ grant or

☐ do not grant

Boom Learning the right to use the logo of Entity in Boom Learning's marketing and promotional materials. If you grant rights, please send your mark guidelines to boomlove@boomlearning.com.

5. Payments, fees, renewals, and the like (all are in USD)

5.1 Prices exclude taxes

Prices exclude taxes and currency exchange settlements unless stated otherwise. You are responsible for paying taxes or other charges. In regions where we collect applicable taxes, they will be displayed on your invoice.

5.2 We provide electronic invoices in USD

All monetary amounts are expressed in US dollars ("USD"), and we expect payment in USD funds. We give you electronic invoices. Your paid invoice is your receipt.

5.3 Purchase orders

You may use purchase orders only through our [Estimate Builder](#).

- Minimum purchase requirements apply.
- Terms and conditions in a Purchase Order are rejected to the extent they conflict with or supersede other applicable terms as stated in Paragraph 1.1.2.
- Additional discount terms over those in the estimate are rejected.
- Net payment terms on purchase orders are accepted.
- "Entire Agreement" clauses in purchase orders are rejected to the extent that they invalidate the other applicable terms set forth in Paragraph 1.1.2.
- Cover remedies are rejected.

If you don't pay the invoice, we reserve the right to cancel the memberships, remove points, and send the bill to collections for the prorated amount due.

5.4 Curriculum Points

Curriculum Points are purchased in US dollars. Points can only be used to products from our Store. They enable Entities to control the purchasing by individual Educators. We may reduce your points balance to obtain satisfaction of a debt you owe us, including debts for dispute fee chargebacks and failure to pay on an account.

Points are non-refundable and non-transferable. Points do not constitute a personal property right and have no value outside Boom Learning. Points have no cash value and cannot be exchanged for cash. Administrators should recover points to the Entity account before removing or releasing Educator accounts. If an account is deleted and the account has points in it at the time of deletion, all points are forfeit and are unrecoverable. We reserve the right to discontinue the availability of points at any time. If we suspect fraud or abuse regarding points, we may cancel, suspend, or limit your ability to redeem points, and we may elect to reverse all transactions involving such points. Purchases of points have daily maximums.

5.5 All sales are final.

Unless otherwise provided, all purchases and redemptions are final and nonrefundable. We may, at our sole discretion, issue refunds. If we cancel or suspend your account, your right to acquire and use products stops immediately. We can only issue refunds for purchases made directly from Boom Learning. Direct all other refund requests to the site from which you made the purchase.

5.6 Contact us first to avoid chargebacks of dispute fees

You must contact us to request a refund. The best way to do so is when logged in from the Help Center. Please select Customer Service & Sales (including refunds) as your request type for fastest service. If you dispute a charge without contacting us or requesting a refund first, we reserve the right to charge you the dispute fee, which can be \$15 to \$20 per dispute.

When a charge is disputed, we will reclaim the purchased items (refunding decks, removing points and expiring items). If the dispute was not valid (for example, if you spent the points or continued using the membership) but is nonetheless resolved against us, you will be required to pay the chargeback before you can continue using your account. We may reclaim the dispute fee by removing points, adding a negative points balance, and/or returning redemptions until there are sufficient points to pay your fee. If the dispute is valid because you used a payment you were not authorized to use, you will be required to pay the dispute fees to regain access to your account.

6. What you can do with Boom Cards

6.1 What you can do

You can

1. Redeem them;
2. Assign them to your students or therapy clients;
3. Display and perform with your students or therapy or demonstrate them to others associated with your school or practice;
4. Set Custom Play settings for Hyperplay and assigned decks;
5. Give feedback, rate them, and contact the author;
6. Print them for your students;
7. Create them; and/or
8. Share or transfer ones you've created with your team.

6.2 Modifications

Boom Cards are owned by their authors. You receive the right to use them. Authors reserve the right to modify Boom Cards after purchase to correct errors and omissions.

6.3. What you can't do with Boom Cards.

You cannot export Boom Cards deck. You can't use them offline; they require a connection to the internet (wired, wireless, or cellular). You may not extract or attempt to extract images, fonts, video, sound, or other elements from Boom Cards using any means.

6.4 Using “assets” (you know: images, fonts, sounds, videos, gifs, and more)

Use assets made or licensed by the Entity. Points can be used to purchase assets for use from the Boom Store. Don't use images of living people unless you have their permission (a right of publicity clearance). For dead people who have been dead less than 70 years, the question gets more complicated, and you should contact an attorney for guidance. We reserve the right to block you from accessing assets you upload, use, or purchase, if we determine that you may not lawfully use the asset. We, in our sole discretion, will determine whether you are entitled to a refund for assets you purchased from an author on Boom Learning.

6.5 Assets purchased from the Boom Store

When you buy assets from the Boom Store, you get permission to include those assets in decks you create and to use assets included in decks with your students. You may modify assets to the extent allowed by the tools included in the Boom Learning platform. Asset authors may provide more generous terms to you. If so, their terms apply.

7.1 Account management

7.1. Accounts and memberships

Entity memberships are annual, pre-paid, and non-refundable. Boom Learning reserves the right to change the terms of memberships at any time at our discretion. Changes will take effect for you on renewal.

7.2 Account deletion and closure

DELETION IS IRREVERSIBLE. AGAIN, DELETION IS NOT REVERSIBLE.

If you have unspent purchased points, you must request a refund before deleting the applicable account. Once an account is deleted, points are forfeit and non-refundable. Educators may add and delete students. Deleting a student deletes the record of that student's past work. Educator account closure is permanent and irreversible - decks created but not shared are permanently destroyed. Entities may authorize us to delete a school-purchased account.

7.3 Store items are licensed per Educator

Decks, bundles, printables, and assets are licensed to a single Educator, not to an entire Entity. Educators may not share purchased Boom Cards with Educators at the Entity without a license for each Educator. If Educators use materials without sufficient licenses, the Entity will need to pay for the additional licenses to bring the account into compliance. Our sales team (sales@boomlearning.com) can help you obtain volume licenses for specified authors.

8. Parents

Parents and legal guardians may review student accounts from the student dashboard. Parents must contact the Educator if they need a password reset for a student account, to correct an error in a student record, or to request an export of student performance records. We must have authorization from the Educator or a legal authority to fulfill parent requests. Please see our [Student Privacy Notice](#).

9. We are FERPA compliant

We are Family Education Rights and Privacy Act (FERPA) compliant. Please see our [Privacy Notice](#). Boom Learning does not require student personally identifiable information to serve its educational purpose.

10. Data is stored in the United States

Please see our [Privacy Notice for Data Exporters](#) for details for European Economic Area, Swiss, UK, and Canadian customers.

11. Account ownership

We use a first-purchaser rule to determine account ownership. The first purchaser owns the account.

- If the first purchaser in an account was an individual, the account belongs to the individual.
- If the first purchaser was an Entity, the account belongs to the Entity.

The following actions will not change the ownership of an account:

- Purchasing points for an existing account. The purchase is a gift to the account owner.
- Paying for a subscription in an existing account. The purchase is a gift to the account owner.

The following actions will change the ownership of an account:

- Release by an Entity school of an account to an individual. All items in the account at the time of release are deemed gifted to the individual. Entities can reassign accounts instead of releasing them.
- Accepting an invitation from an Entity to join an Entity account is an agreement by an individual to transfer ownership of the account to the Entity.

Any attempt to seize or transfer ownership inconsistent with this section shall be null and void unless supported by a notarized statement signed by both parties stating the correct ownership of the account or a court or arbitral order.

12. Security and Breach Response

Details are in our [Privacy Notice](#).

13. Indemnification and Limitations of Liability

13.1 Mutual Indemnification

We each agree, at the request of the other, to defend, hold harmless, and indemnify the other party and its directors, officers, employees, agents, affiliates, and each of their successors from and against all third-party claims, actions, demands, proceedings, damages, costs, and liabilities of any kind that arise out of or relate to negligence, gross negligence, or willful misconduct attributable to the indemnifying party's agents and employees concerning personally identifiable data and intellectual property rights. Such costs include reimbursing the costs of providing breach notifications attributable to the indemnifying party's negligence or misconduct.

We shall have no liability to Entity for any liability arising from the Entity's actions in assigning resources that collect information in violation of a law that applies and for any failure by the Entity to provide a student with any required information regarding their rights.

13.2 Insurance

We will maintain general liability and cyber liability (\$3 million) insurance.

13.3 DISCLAIMER OF WARRANTIES

Boom Learning and the content/products found on Boom Learning are provided "AS IS" and "AS AVAILABLE" without warranty of any kind, whether express or implied. This includes without limitation the implied warranties of merchantability, fitness for a particular purpose, title, or non-infringement. Except as set forth in Section 13.1, the entire risk arising out of use or performance of Boom Learning products remains with you. No communication, whether oral or written, from us to you creates any warranty. We and our Authors may change, suspend, or discontinue Boom Learning or any product at any time for any reason, with or without notice. If we discontinue services, your resources may not be available to you. You agree that neither we nor our Public Authors shall be liable to you or any third party if Boom Learning or any product is changed, suspended, or discontinued.

13.4 LIMITATION OF LIABILITY

We work hard to make sure our system is available, but there are a substantial number of factors beyond our control in providing the services, including browser updates, filtering software, entity IT settings, and more. As a result, we can't guarantee that any or all features will always work, or that Boom Learning will be continuously available to you or your students.

Except as stated in Section 13.1, we and our suppliers are not liable to you for any errors or inaccuracies you find in or on Boom Learning; any service, system, or process delays, latencies, failures, or interruptions; or any actions you take in reliance on us, our suppliers, or the content. Our and our suppliers' liability to you is limited whether or not the harm to you was foreseeable. We and our suppliers are not liable to you for any special, exemplary, or punitive damages, including loss of data, revenue, and/or profits, costs, or expenses, including legal fees and expenses, regardless of the legal theory upon which you claim liability, even if you have advised us or our supplier of the possibility of those damages.

Our and our suppliers' liability to you is limited to the amount actually paid by you to us, if any, for the product(s) at issue. YOU AGREE THAT YOU ARE WAIVING CLAIMS THAT YOU MAY NOT KNOW OR SUSPECT YOU HAVE AT THE TIME YOU ENTER INTO THIS AGREEMENT. YOU AGREE TO SPECIFICALLY WAIVE ANY CLAIMS AS A CREDITOR YOU MAY HAVE THAT YOU DO NOT KNOW OR SUSPECT EXIST IN YOUR FAVOR. YOUR WAIVER AS A CREDITOR INCLUDES WAIVER OF CLAIMS THAT WOULD HAVE MATERIALLY AFFECTED HOW YOU WOULD SETTLE A MATTER IN WHICH WE ARE A DEBTOR TO YOU. You acknowledge and agree that we cannot ensure that either content or data will be protected from theft or misuse. We have no liability arising from a failure of any system or feature that limits the use of content or data.

Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

14. Additional Privacy and Security Terms

14.1 Applicability

These terms amend our standard Privacy Notice.

14.2 Audits

We will provide responses to reasonable requests from the Entity, including responses to information security and audit questionnaires, provided that Entity will not exercise this right more than once per year without cause. Our answers to such responses are confidential and will be held in strictest confidence by the Entity. Such audits are subject to reasonable time and manner restrictions. We will cooperate reasonably with any state or federal agency with jurisdiction in connection with any audit or investigation of us or the delivery of the services.

14.3 Cooperation

In the event of a breach arising because of Entity personnel, we will cooperate with the Entity and take such reasonable commercial steps as are directed by the Entity to assist in the investigation, mitigation, and remediation of the Entity's data, provided that the Entity shall reimburse us for expenses attributable to the Entity's personnel.

14.4 Ownership of Data

As between the Entity and us, personally identifiable information provided by the Entity, its Educators, and students is the property of the Entity. Parent or student requests for access to data will be directed to the school.

14.5 Deletion

We provide Entities with self-help tools for data deletion. Entities are expected to promptly (within 90 days) after expiration to use the tools provided to delete data that is no longer required by the Entity. If the Entity fails to promptly delete data from expired and non-renewed Entity accounts, Provider may delete that data as specified in the [Information Security Plan](#).

14.6 Regulator Notice

We agree not to report a security incident directly to the applicable regulators unless directed in writing by the Entity. The Entity agrees to indemnify and hold us harmless from any fines, fees, or liabilities assessed against us for not reporting an incident that rises to a reportable incident. Where this paragraph is inconsistent with governing law, we may report a reportable incident directly with no liability to the Entity and without being in breach of these Entity Terms.

15. Additional Terms

15.1 No data scraping or automated collection

Scraping refers to the use of an automated process to extract data from our site, including components of Boom Cards, and the Boom Cards themselves. You may not scrape any of our properties for any reason. Search engines that comply with our robots.txt instructions are permitted to index only pages that we authorize for indexing. You are prohibited from using Boom Learning for any activity that

1. facilitates any virus, malware, Trojan horse, worm, ransomware, or other activity that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any code, data, or information;
2. uses a robot, spider or other automated process, or manual process to monitor or copy Boom Learning, or any portion thereof, without our prior written consent;
3. uses any device, software, routine, or process to bypass any technology protecting access to Boom Learning; or
4. interferes with or attempts to interfere with technology protecting access to Boom Learning.

15.2 Licensed and not sold

All necessary rights to take the actions described that are not stated explicitly are implied. Boom Learning, along with products available on it, are licensed, not sold, and ongoing access requires a current account.

15.3 Waiver

Our failure to act if you fail to comply with a term does not waive our right to act on any subsequent failure to comply. Nor does it waive the term in question.

15.4 Survival

Any terms that by their nature are intended to apply indefinitely continue to apply, including but not limited to perpetual licenses, ownership provisions, warranties, disclaimers, indemnities, and limitations of liability. Terms that are intended to survive for a period after termination shall survive for the designated period.

15.5 Assignment and Delegation

Entity consents to the delegation of duties to the subcontractors and subprocessors listed in our [Subprocessor Disclosure](#). We may assign any rights we have under any agreement to any successor or purchaser of us or of our assets to the extent permitted by law and provided that such successor or

purchaser agrees to be bound by the terms. If you assign your rights or obligations to another party, you must give us written notice of the assignment no later than ten (10) business days following the assignment. This agreement is binding on and inures to the benefit of any successors and assigns.

15.6 Severability

If the final judgment of a court or arbitrator declares any term invalid, void, or unenforceable, then you and we agree to reduce the scope, duration, area, or applicability of the term; to delete specific words or phrases; or to replace any invalid, void, or unenforceable term with a term that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term.

15.7 Federal Regulations

If United States federal award monies are utilized in procuring the services covered by these Entity Terms, Title 2, Subtitle A, Chapter II, Appending II to Part 200 shall be the controlling law voiding any other language that may be in conflict of said law.

15.8 English Language

It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.