

# TIPS VENDOR AGREEMENT

Between Omega Labs Inc. DBA Boom Learning and  
(Company Name)

**THE INTERLOCAL PURCHASING SYSTEM (TIPS),**  
a Department of Texas Education Service Center Region 8 for  
TIPS RFP 210401 Office and School Supplies, Products and Services

## General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter "TIPS") a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686 and the TIPS Vendor. This Agreement consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order ("PO"), Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the possible addendums.

## Terms and Conditions

### Freight

All quotes to Members shall provide a line item for cost for freight or shipping regardless if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge", "\$0", "included in price" or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

### Warranty Conditions

All new supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal ("RFP") category. All goods proposed and sold shall be new unless clearly stated in writing.

### Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.



### **Agreements**

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion.

### **Tax exempt status**

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

### **Assignments of Agreements**

No assignment of this Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

### **Disclosures**

- Vendor and TIPS affirm that he/she, or any authorized employees or agents, has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

### **Term of Agreement and Renewals**

The Agreement with TIPS is for approximately three (3) years with an option for renewal for an additional one (1) consecutive year. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base three-year term. Whether or not to offer the extension is at the sole discretion of TIPS.

**"Start Date" for Term Calculation Purposes Only:** Regardless of actual award/effective date of Contract, for Agreement "term" calculation purposes only, the Agreement "start date" is the last day of the month that Award Notifications are anticipated as published in the Solicitation

**Example:** *If the anticipated award date published in the Solicitation is May 22, 2020 but extended negotiations delay award until June 27, 2020 The end date of the resulting initial "three-year" term Agreement, (which is subject to an extension(s)) will still be May 31, 2023.*

**"Termination Date":** The scheduled Agreement "termination date" shall be the last day of the month of the month of the Original Solicitation's Anticipated Award Date plus three years.

**Example:** *If the original term is approximately three years, and the solicitation provides an anticipated award date of May 22, 2020, the expiration date of the original three-year term shall be May 31, 2023.*



**Extensions:** Any extensions of the original term shall begin on the next day after the day the original term expires.

**Example Following the Previous Example:** *If TIPS offers a one-year extension, the expiration of the extended term shall be May 31, 2024.*

TIPS may offer to extend Vendor Agreements to the fullest extent the original Solicitation permits.

**Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.**

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

**Shipments**

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

**Invoices**

Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

**Payments**

The TIPS Member will make payments directly to the Vendor, the Vendor Assigned Dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

**Pricing**

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

**Participation Fees and Reporting of Sales to TIPS by Vendor**

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the Solicitation. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Fees are due on all TIPS purchases reported by either Vendor or Member. Fees are due to TIPS upon payment by the Member to the Vendor, Reseller or Vendor Assigned



Dealer. Vendor, Reseller or Vendor Assigned Dealer agrees that the participation fee is due to TIPS for all Agreement sales immediately upon receipt of payment including partial payment, from the Member Entity and must be paid to TIPS at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently, or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS. Thus, when an awarded Vendor, Reseller or Vendor Assigned Dealer receives any amount of payment, even partial payment, for a TIPS sale, the legally effective fee for that amount is immediately due to TIPS from the Vendor and fees due to TIPS should be paid at least on a monthly basis, specifically within 31 calendar days of receipt of payment, if not more frequently.

### **Reporting of Sales to TIPS by Vendor**

Vendor is required to report all sales under the TIPS contract to TIPS. When a public entity initiates a purchase with a TIPS Awarded Vendor, if the Member inquires verbally or in writing whether the Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether or not the Member is seeking a TIPS purchase. Once verified, the Vendor must include the TIPS Contract number on any communications and related sales documents exchanged with the TIPS Member entity. To report sales, the Vendor must login to the TIPS Vendor Portal online at [https://www.tips-usa.com/vendors\\_form.cfm](https://www.tips-usa.com/vendors_form.cfm) and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at [accounting@tips-usa.com](mailto:accounting@tips-usa.com). The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. Any overpayment of participation fees to TIPS by a Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. It is the Vendor's responsibility to identify which sales are TIPS Agreement sales and pay the correct participation fee due for TIPS Agreement sales. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date of overpayment will be non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline to notify if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at [tips@tips-usa.com](mailto:tips@tips-usa.com) or call (866) 839-8477 if you have questions about paying fees.

### **Indemnity**

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

### **State of Texas Franchise Tax**



By signature hereon, the Vendor hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

#### **Miscellaneous**

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

#### **Purchase Order Pricing/Product Deviation**

If a deviation of pricing/product on a Purchase Order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

#### **Termination for Convenience of TIPS Agreement Only**

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded Vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686. The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

#### **TIPS Member Purchasing Procedures**

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement Number. Orders are typically emailed to TIPS at tipspo@tips-usa.com.

- Awarded Vendor delivers goods/services directly to the participating member.
- Awarded Vendor invoices the participating TIPS Member directly.
- Awarded Vendor receives payment directly from the participating member.
- Fees are due to TIPS upon payment by the Member to the Vendor. Vendor agrees to pay the participation fee to TIPS for all Agreement sales upon receipt of payment including partial payment, from the Member Entity or as otherwise agreed by TIPS in writing and signed by an authorized signatory of TIPS.

#### **Licenses**

Awarded Vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded Vendor. Awarded Vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded Vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.



### **Novation**

If awarded Vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case by case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

### **Site Requirements (only when applicable to service or job)**

**Cleanup:** When performing work on site at a TIPS Member's property, awarded Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

**Preparation:** Awarded Vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

**Registered sex offender restrictions:** For work to be performed at schools, awarded Vendor agrees that no employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Awarded Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion. Awarded Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Safety Measures**

Awarded Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

### **Smoking**

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

### **Marketing**

Awarded Vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM.



### **Supplemental Agreements**

The TIPS Member entity participating in the TIPS Agreement and awarded Vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS' Agreement with Vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

### **Survival Clause**

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

### **Legal obligations**

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

### **Audit rights**

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non- compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the



TIPS Member.

### **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

### **Choice of Law**

The Agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

### **Venue, Jurisdiction and Service of Process**

Any Proceeding arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Venue for any dispute resolution process, other than litigation, between TIPS and the Vendor shall be located in Camp or Titus County, Texas.

### **Project Delivery Order Procedures**

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded Vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded Vendor shall acknowledge the TIPS Member's request as soon as possible, but must make contact with the TIPS Member within two working days.

### **Status of TIPS Members as Related to This Agreement**

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

### **Vendor's Resellers as Related to This Agreement**

Vendor's Named Resellers ("Resellers") under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the awarded Vendor. If Resellers fail to report sales to TIPS under your Agreement, the awarded Vendor is responsible for their contractual failures



and shall be billed for the fees. The awarded Vendor may then recover the fees from their named reseller.

**Support Requirements**

If there is a dispute between the awarded Vendor and TIPS Member, TIPS or its representatives may, at TIPS sole discretion, assist in conflict resolution if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded Vendor's TIPS project files, documentation and correspondence related to the requesting TIPS Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

**Incorporation of Solicitation**

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

**SECTION HEADERS OR TITLES**

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

**STATUTORY REQUIREMENTS**

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270.

By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.

You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel  
ESC Region 8/The Interlocal Purchasing System (TIPS)  
4845 Highway 271 North  
Pittsburg, TX,75686  
And by an email sent to [bids@tips-usa.com](mailto:bids@tips-usa.com)

**Insurance Requirements**

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders:

**General Liability** \$1,000,000 each Occurrence/ Aggregate



<b>Automobile Liability</b>	\$300,000 Includes owned, hired & non-owned
<b>Workers' Compensation</b>	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
<b>Umbrella Liability</b>	\$1,000,000

When the Vendor or its subcontractors are liable for any damages or claims, the Vendor's policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the Member. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

## Special Terms and Conditions

- **Orders:** All Vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.
- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
- **Order Confirmation:** All TIPS Member Agreement orders are approved daily by TIPS and sent to the Vendor. The Vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS Member by the Vendor, the Member is to be notified within 3 business days and appropriate action taken based on customer request.

The following section titled Government Agency Terms of Service shall be part of any contract made with a TIPS Member related to the TIPS Vendor Agreement 210401 Office and School Supplies, Products and Services.



# Government Agency Terms of Service

VERSION JULY 1, 2021

When completed and signed by a person with authority to bind the school, and returned to us, it overrides any conflicting terms in the Terms of Service and Privacy Notices. Print the document on paper or to .pdf, complete the required fields, and email to [legal@boomlearning.com](mailto:legal@boomlearning.com).

## Agreement 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 and based in the United States or its territories. This agreement is designed to serve as a master agreement between the parties.

Government Entity Name	
Street Address	
City	
County or Parish	
State/Province	
Zip or Postal Code	
Telephone Number	
Email Contact	
Termination Date (optional)	
Specifically Applicable Laws (optional field for Governmental Agency to list specific laws it expects Provider to comply with)	

1.2 "**Provider**" is Boom Learning (a dba of Omega Labs Inc., a WA corporation) with a mailing address of 9805 NE 116th ST #7198 Kirkland WA 98034 and a physical place of business at 10916 101st PL NE Kirkland WA 98033 (DO NOT MAIL TO THIS ADDRESS).

1.2 The entire agreement of the parties shall consist of the following, In the event of any conflicting terms, order of precedence shall be:

1. Any separate data privacy agreement or rider signed by the parties.
2. This Government Agency Terms Agreement.
3. Any rate sheet provided to Government Entity.



4. The Boom Learning Privacy Notice, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.
5. The Boom Learning Terms of Service, and any applicable documents incorporated therein by reference, to the extent not superseded by the above listed documents.
6. Any purchase order provided by Government Entity, to the extent not superseded by the above listed documents and only to the extent applicable to the product and quantities purchased.

## 2. Applicable Laws and Dispute Resolution.

2.1 The parties agree that this agreement will be governed by the national laws of the Government Agency, by the state or provincial laws of the state listed as the state of the Government Agency, and by the local laws of the city and county listed as the locus of the Government Agency. Government Agency may opt to specify a particular law or laws applicable to the data it is supplying to Provider; provided, however, that doing so does not excuse Provider from compliance with all applicable laws. Any data that must be kept in confidence under such laws shall be considered "**Protected Data**".

2.2 The parties agree to strike in its entirety all references to arbitration, mediation, or other alternative dispute resolution in Provider's Terms of Service and Privacy Policies. The parties agree in good faith to use the following lower-cost options to resolve disputes before resorting to court action:

- negotiation between representatives with the authority to settle the controversy.
- if negotiations do not resolve the matter, then:
  - If the matter is in the subject matter jurisdiction of the Copyright Claims Board, and the Copyright Claims Board accepts the matter, to use the Copyright Claims Board to resolve the matter;
  - If the total amount in controversy is less than \$100,000, to use virtual mediation through JAMSconnect or another online mediator of Government Agency's choosing; and
- If none of the above are available or successful in resolving the dispute, the parties may proceed with formal legal action.

2.3 The governing law for the formal legal action shall be the governing laws of the city, county, state or province, and nation of the Government Entity listed herein. If Government Entity fails to list a location, then the governing law shall be the laws of the State of Washington without reference to conflicts of laws principles.

2.4 The venue for formal legal action shall be the courts of the county or parish listed by the Government Agency in this document, which shall be a county or parish in which the Government Agency has a location. If the Government Agency fails to list a county or parish, the venue shall be in any county or parish within the state or province in which the Government Agency is located. If Government Agency fails to list a state or province, then the venue shall be in King County in the State of Washington.

## 3. Indemnification

3.1 Provider agrees to indemnify and hold harmless the Government Entity for the damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to its agents and employees concerning student data, copyright, or trademark. Such costs include reimbursing the costs of providing breach notifications attributable to such negligence or misconduct, and providing replacement content or obtaining rights for continued use. Provider shall maintain general liability and cyber liability insurance.



3.2 Provider shall have no indemnification obligations to the Government Agency for damages and costs arising out of any negligence, gross negligence, or willful misconduct attributable to the Government Agency, its employees or its agents for any claim whatsoever, including but not limited to: violations of privacy rights, copyrights, and trademark rights by the affirmative acts of Government Agency and its employees and agents.

3.3 Provider shall have no liability to the Government Entity for any liability arising from the Government Entity's actions in assigning a resource that collects information in violation of a law that applies and for any failure by the Governmental Entity to provide a student with any required information regarding their rights. This paragraph replaces paragraph 4.4 of the General Privacy Notice.

## 4. Disclosure and Deletion of Protected Data

4.1 Provider 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 agreement. 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 Government Entity consents to the delegation of duties to the subcontractors and subprocessors listed in the [Subcontractor and Subprocessors disclosure list](#) unless an objection is filed with Provider in writing and is accepted by Provider.

4.3 At all times, Provider supplies 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 progress. In the event Government Entity is unable to issue instructions using the provided self-help tools, Government Entity may [contact](#) Provider to perform deletion or export. If Government Entity fails to promptly delete Protected Data from expired and non-renewed Government Entity accounts, Provider may delete that data as specified in Provider's Privacy Policy.

## 5. Audits

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

## 6. Data Breach

6.1 A security incident that rises to the level of a data breach is an incident of data loss or unauthorized data access that (a) compromises the confidentiality or integrity of the data and in doing so (b) is likely to cause harm to the data subjects impacted. A breach includes harms that can be



substantial (financial information, account credentials, medical information); it excludes speculative harms — a harm must be reasonably likely. Unauthorized access to data that is encrypted is not a breach if the encryption key is not accessed or acquired.

6.2 In the event of a breach arising because another person at the Government Agency accesses Protected Data, Provider

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

## Breach response procedures

### Notice content

In the event of a breach of User Data that contains personal information, we will contact the account holder for the affected individual(s) using the information we have on file. We will provide notice as soon as reasonably possible, provided that we may delay notice if a law enforcement agency determines that the notice will impede a criminal investigation. Such notice will include in plain language What Happened, What Information Was Involved, When It Occurred, What We are Doing, What You Can Do, and For More Information.

### Notice timeline

Educators will be notified without undue delay and within 7 days of determining that a data breach affecting school User Data has occurred. If the specific jurisdiction in which Educator is based requires a shorter notification period, the school shall provide Provider with that time frame in the Terms Addendum (see the Terms of Service). We will provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach. In many cases, we do not collect or store information about students that would enable us to contact students or their parents directly.

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

6.3 Provider may not report a breach directly to the applicable state regulators unless directed in writing by the Government Entity. The Government Entity agrees to indemnify and hold Provider harmless from any fines, fees, or liabilities assessed against Provider for not reporting the breach. Where this paragraph is inconsistent with state and local law, Provider may report the breach directly to the applicable state regulators with no liability to Government Entity and without such report being a breach of this agreement.

6.4 Government Agency will be notified without undue delay and within 7 days of determining that a data breach affecting school Protected Data has occurred. If the specific jurisdiction in which Educator is based requires a shorter notification period, the school shall provide Provider with that time frame in the Terms Addendum (see the Terms of Service). We will provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach. In many



cases, we do not collect or store information about students that would enable us to contact students or their parents directly.

## 7. Termination

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

7.2 As a penalty for Provider's noncompliance with its obligations under this Agreement, the Government Entity may terminate its relationship with Provider in writing and demand a refund of all unredeemed purchased points and a pro-rata refund of the remaining portion of the annual membership. Such termination shall be effective on delivery of the notice by email to [legal@boomlearning.com](mailto:legal@boomlearning.com), by certified mail to 9805 NE 116th ST #7198 Kirkland WA 98033, or by in-person delivery (not mail) to 10916 101st PL NE Kirkland WA 98033.

7.3 Should any provision of the agreement be invalid or unenforceable, then the remainder of the agreement 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.


## 8. Acceptance

This agreement is a general offer of terms to any party that is a Government Entity as defined herein. To accept the terms, complete the form below and return. By signing and returning this Government Agency Terms of Service agreement, the authorized representative of the Government Entity warrants and represents that it is a Government Entity. Any Government Agency Terms of Service agreement signed and returned to Provider by a party that is not a Government Entity is null and void.

I hereby warrant and represent that I, \_\_\_\_\_ (printed name), have the authority to sign and bind the Government Entity, pursuant to a policy adopted by the Government Entity's governing board or body, to this agreement with Provider and to bind the teachers, staff, agents and employees of the Government Entity to its terms.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Government Agency Name: \_\_\_\_\_

I hereby warrant and represent that I, Mary Oemig (printed name), have the authority to sign and bind the Provider to this agreement with Government Agency.

Signed:  \_\_\_\_\_ Date: June 3, 2021  
Chief Executive Officer  
Boom Learning (a dba of Omega Labs Inc.)



## ADDENDUM

This **ADDENDUM OF EXCEPTIONS** ("**Addendum**") is between Omega Labs Inc. dba Boom Learning, 9805 NE 116<sup>th</sup> ST Suite #7198, Kirkland WA 98034 (the "Licensor") and

TIPS (the "Educational Agency") and modifies the Vendor Agreement ("**Agreement**"), which Agreement has an effective date of June 2, 2020.

### RECITALS

- A. The Educational Agency seeks technology to assist in the delivery of education and related support to its students;
- B. Licensor has demonstrated expertise in providing a platform as a service ("**Boom Learning**") for delivering instructional content ("**Boom Cards**") and well as a marketplace for obtaining instructional content (collectively the "**Boom Services**"), has represented that it has the requisite knowledge, skill, experience, and other resources necessary to perform such services, and is desirous of providing such services for the Educational Agency;
- C. The Educational Agency and Licensor wish to execute the Agreement, but the Agreement requires modification to match the platform being delivered to ensure both parties can legally and appropriately benefit from the Agreement. In the event of a conflict between the Agreement and this Addendum, the terms of this Addendum will prevail.

NOW THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Addendum by this reference, and the mutual covenants contained herein, the parties agree as follows:

1. **Indemnification:**

This modifies The Indemnification provision of the Agreement.

Such warranty and indemnification shall not extend to user generated content created by District.

2. **Employees:**

This modifies the Safety Measures and Smoking provisions of the Agreement.

Licensor operates on a strictly remote basis. Licensor's employees work from home and Licensor cannot regulate its employees in their homes. However, Licensor warrants that should Licensor's employees enter the EA's premises, Licensor's employees shall not engage in unsafe practices and shall not smoke.

3. **Insurance:**

This modifies the Insurance provision of the Agreement.

3.1. Licensor is a fully remote company and operates off-site exclusively.

3.2. Licensor obtains Worker's Compensation for employees in the states or territories where they work as required by local law.

3.3. Licensor provides the insurance coverages summarized in EXHIBIT A to this Addendum. By signing this agreement, Educational Agency agrees that it has determined that such coverages are sufficient considering the services to be performed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the last date written below.



<b>Educational Agency</b>	<b>Omega Labs Inc. dba Boom Learning</b>
<b>By:</b> <i>David Wayne Fitts</i>	<b>By:</b> <i>Mary Oemig</i>
<b>Name:</b> David Fitts	<b>Name:</b> Mary Oemig
<b>Title:</b> Executive Director	<b>Title:</b> President and General Counsel

Date: 6/4/2021

Date: May 6, 2021



# Addendum Exhibit "A"



THE HARTFORD  
BUSINESS SERVICE CENTER  
3600 WISEMAN BLVD  
SAN ANTONIO TX 78251

February 18, 2021

OMEGA LABS INC DBA BOOM LEARNING9805  
NE 116TH ST STE 7198  
KIRKLAND WA 98034-4245

## Account Information:

<b>Policy Holder Details:</b>	OMEGA LABS INC DBA BOOM LEARNING
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## Contact Us

Business Service Center  
**Business Hours:** Monday - Friday (7AM  
- 7PM Central Standard Time)**Phone:**  
(877) 287-1312

**Fax:** (888) 443-6112

**Email:** [agency.services@thehartford.com](mailto:agency.services@thehartford.com)

**Website:** <https://business.thehartford.com>

Enclosed please find a Summary Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,  
Your Hartford Service Team





February 18, 2021

**Account Policy Information:**

<b>Agency Name</b>	PAYCHEX INSURANCE AGENCY INC
<b>Agency Code</b>	76210761

**Recipient Information**

OMEGA LABS INC DBA BOOM LEARNING  
9805 NE 116TH ST STE 7198  
KIRKLAND WA 98034-4245

**SUMMARY OF INSURANCE**

<b>Account Policy Recap</b>	<b>Policy Number</b>	<b>Policy Term</b>	<b>Premium</b>
Spectrum Sentinel Insurance Company Ltd.	76 SBU BC0451	06/01/2020 to 06/01/2021	\$1,359



**Summary of Insurance (Continued)**

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**Spectrum Summary of  
Insurance With**

Sentinel Insurance  
Company Ltd.

A member company of  
The Hartford

06/01/2020 to 06/01/2021

**Comm'l Liability Coverages – Applicable to all policy locations**

<b><u>Coverage Name</u></b>	<b><u>Limit</u></b>
EACH OCCURRENCE	\$1,000,000
DAMAGE TO PREMISES RENTED TO YOU	\$1,000,000
MEDICAL EXPENSE	\$10,000
PERSONAL & ADVERTISING INJURY	\$1,000,000
GENERAL AGGREGATE	\$2,000,000
PRODUCT/COMPLETED OPERATION AGGREGATE	\$2,000,000
EMPLOYEE PRACTICES LIABILITY (CLAIMS MADE)	\$10,000 EACH CLAIM
EMPLOYEE PRACTICES LIABILITY (CLAIMS MADE)	\$10,000 AGGREGATE
TECHNOLOGY SERVICES COVG-LTD	
TERRORISM	
CYBERFLEX LIABILITY EXCLUSION	
FAILSAFE GIGA TECHNOLOGY E & O	\$1,000,000
FAILSAFE GIGA TECHNOLOGY E & O	\$1,000,000 AGGREGATE



# TIPS Vendor Agreement Signature Form

2021 TIPS Vendor Agreement (Products and Services)

RFP 210401 Office and School Supplies, Products and Services

Company Name Omega Labs Inc. DBA Boom Learning

Address 9805 NE 116th St #7198

City Kirkland State WA Zip 98034

Phone 833-969-2666 Fax 425-823-4907

Email of Authorized Representative legal@boomlearning.com

Name of Authorized Representative Mary E. Oemig

Title Chief Executive Officer and General Counsel

Signature of Authorized Representative  Mary E. Oemig (Jun 3, 2021 11:42 PDT)

Date June 3, 2021

TIPS Authorized Representative Name David Fitts

Title Executive Director

TIPS Authorized Representative Signature David Wayne Fitts

Approved by ESC Region 8 David Wayne Fitts

Date 6-24-2021



## **NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES**

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



## 210401

### Boom Learning Supplier Response

#### Event Information

Number: 210401

Title: Office and School Supplies, Products and Services

Type: Request for Proposal

Issue Date: 4/1/2021

Deadline: 5/21/2021 03:00 PM (CT)

Notes: If you currently hold **TIPS Contract 180902 Classroom and Teaching Aids Goods and Services ("TIPS Contract 180902")**, TIPS encourages you to respond to this solicitation as it also covers classroom and teaching goods and services. If you currently hold TIPS Contract 180902 and choose not to respond to this solicitation, you will be required to respond to a similar replacement solicitation later in the year.

**If you currently hold TIPS Contracts 200903 Books, Library, and Educational Materials AND/OR 210301 Academic Curriculum, Instructional Materials and Services, that current contract covers all of your offerings and you are happy with the pricing/terms, there is no need to respond to this Solicitation unless it is your preference to hold multiple contracts that allow the same offerings.**



## Contact Information

Address: Region 8 Education Service Center  
4845 US Highway 271 North  
Pittsburg, TX 75686  
Phone: +1 (866) 839-8477  
Email: [bids@tips-usa.com](mailto:bids@tips-usa.com)

## Boom Learning Information

Contact: Elizabeth Yates  
Address: 9805 NE 166th ST  
#7198  
Kirkland, WA 98034  
Phone: (833) 969-2666  
Email: sales@boomlearning.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Elizabeth Yates

Signature

Submitted at 5/21/2021 12:26:58 PM

bids@boomlearning.com

Email

## Supplier Note

Product inquiries to: Sales@boomlearning.com Legal concerns to: Legal@boomlearning.com Accounts Receivable/Billing to: finance@boomlearning.com

## Requested Attachments

### Agreement Signature Form

210401 Agreement Signature Form.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

### All Other Certificates

No response

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)  
DO NOT UPLOAD encrypted or password protected files.

### Pricing Form 2

210401 Pricing Form 2.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.  
DO NOT UPLOAD encrypted or password protected files.

### Reference Form

Reference Form.xls

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

### Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.



## Proposed Goods and Services

Boom Learning Rate Sheet 2021-2022 TIPS TEXAS.pdf

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

## D/M/WBE Certification OPTIONAL

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

## Warranty

No response

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

## Vendor Agreement

210401 Vendor Agreement.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

## Pricing Form 1

210401 Pricing Form 1.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

## Supplementary

No response

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

## Logo and Other Company Marks

Logo - Blue BG White Content (1).png

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo

Format: 300 x 225 px - .png, .eps, .jpeg preferred

## Certification of Corporate Offerer Form- COMPLETE ONLY IF OFFERER IS A CORPORATION

CERTIFICATION OF CORPORATE OFFERER FORM (1).pdf

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

## Disclosure of Lobbying Activities Standard Form LLL

No response

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

## Confidentiality Claim Form

210401 CONFIDENTIALITY CLAIM FORM- Corrected.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

## Current W-9 Tax Form

20210407 W-9 Boom Learning.pdf

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.

## Response Attachments

### Boom Learning Technical Specification Information.pdf

Technical Specifications and Requirements

### Privacy Policy.pdf

Privacy Policy

### Service Levels and Support.pdf

Expected Service Levels and Support

### tx\_TIPS\_Addendum - signed.pdf

Addendum to Agreement

## Bid Attributes

### 1 Yes - No

Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.

YES

### 2 Yes - No

Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <https://comptroller.texas.gov/purchasing/vendor/hub/> or in a HUBZone as defined by the US Small Business Administration at <https://www.sba.gov/offices/headquarters/ohp>

Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.

No

### 3 Yes - No

The Vendor can provide services and/or products to all 50 US States?

Yes

### 4 States Served:

If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)

No response

### 5 Company and/or Product Description:

This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)

Boom Learning is a platform and set of tools for creating and assigning Boom Cards which are cloud-based digital learning resources, such as digital flash/task cards, quizzes, interactive lessons, and more. Boom Learning can be used with in-person learning & remote learning. Real-time access to reports allows for quick intervention and learning recovery strategies. We are a signatory to the Student Data Privacy Pledge & protecting student data is our priority. We allow for Single Sign-On and integration for multiple LMS platforms.

### 6 Primary Contact Name

Primary Contact Name

Elizabeth Yates



7	<b>Primary Contact Title</b> Primary Contact Title <input type="text" value="Sales Team"/>
8	<b>Primary Contact Email</b> Primary Contact Email <input type="text" value="sales@boomlearning.com"/>
9	<b>Primary Contact Phone</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="8339692666"/>
10	<b>Primary Contact Fax</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="4258234907"/>
11	<b>Primary Contact Mobile</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
12	<b>Secondary Contact Name</b> Secondary Contact Name <input type="text" value="Tu Duong"/>
13	<b>Secondary Contact Title</b> Secondary Contact Title <input type="text" value="Customer Service Manager"/>
14	<b>Secondary Contact Email</b> Secondary Contact Email <input type="text" value="sales@boomlearning.com"/>
15	<b>Secondary Contact Phone</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="8339692666"/>
16	<b>Secondary Contact Fax</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>

<b>17</b>	<b>Secondary Contact Mobile</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
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<b>18</b>	<b>Admin Fee Contact Name</b> Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Finance Team"/>
-----------	--

<b>19</b>	<b>Admin Fee Contact Email</b> Admin Fee Contact Email <input type="text" value="finance@boomlearning.com"/>
-----------	--

<b>20</b>	<b>Admin Fee Contact Phone</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="8339692666"/>
-----------	--

<b>21</b>	<b>Purchase Order Contact Name</b> Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Sale Team"/>
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<b>22</b>	<b>Purchase Order Contact Email</b> Purchase Order Contact Email <input type="text" value="sales@boomlearning.com"/>
-----------	--

<b>23</b>	<b>Purchase Order Contact Phone</b> Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="8339692666"/>
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<b>24</b>	<b>Company Website</b> Company Website (Format - www.company.com) <input type="text" value="www.boomlearning.com"/>
-----------	---

<b>25</b>	<b>Federal ID Number</b> Federal ID Number also known as the Employer Identification Number (EIN). Numeric only. (Format: 123456789) <input type="text" value=""/>
-----------	--

<b>26</b>	<b>Primary Address</b> Primary Address <input type="text" value="9805 NE 116th ST #7198"/>
-----------	--

<b>27</b>	<b>Primary Address City</b> Primary Address City <input type="text" value="Kirkland"/>
-----------	--



28	<b>Primary Address State</b>
	Primary Address State (2 Digit Abbreviation)
<input type="text" value="WA"/>	

29	<b>Primary Address Zip</b>
	Primary Address Zip
<input type="text" value="98034"/>	

30	<b>Search Words:</b>
	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. <b>YOU MAY NOT LIST NON-CATEGORY ITEMS.</b> (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)
<input type="text" value="Educational software, Remote Learning, Distance Learning, Instructional Materials, Online Instruction, Educational Instruction Services, Educational Services, Special Education, ESL, ELL, Formative Assessment, Electrical physics materials, Geology and earth science, Precalculus and calculus teacher resource materials, Geography and map skills resources and accessories, Phonics resource materials and accessories, Algebra teacher resource materials, Energy and power physics materials, Teacher resource materials, Educational games, Foreign languages resources, Probability or chance or data or problem solving teacher resource materials, Word building resource materials and accessories, Consumer economics and money management and independent living instructional materials, Language arts resource materials, Alphabet skills materials and resources, Geometry teacher resource materials, Mechanical physics materials, Fractions and pentominoes and decimals teaching aids, Forensic science teaching equipment and supplies, Electronic learning aid916s, Chemistry and electrochemistry and microchemistry, Technology teaching aids and materials, Money and time teacher resource materials, Political science, Body systems and related materials, Multicultural activities and resources, Math kits, Career education instructional materials, Base ten and place value teacher resource materials, Vocational teaching aids and materials, Astronomy, Curriculum guides and projects and activities and lessons, Patterning or matching or spatial perception or logical thinking teacher resource materials, Dating and sex and teen pregnancy and parenting skills and child development instructional materials, Spelling resource materials, Basic math operations and numeration resources and materials, Biotechnology and bio chemistry and genetics and microbiology and related materials, Early learning math and counting resources and accessories, Life skills resources instructional materials Health education and nutrition and food preparation instructional materials, Reading books and resources History teaching resources"/>	

31	<b>Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?</b>
	Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR) compliant.
Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to TIPS Members regardless of the fund source, whether it be local, state or federal?	
<input type="text" value="Yes"/>	

3  
2 **Yes - No**

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. It does not affect scoring with TIPS.

3  
3 **Company Residence (City)**

Vendor's principal place of business is in the city of?

3  
4 **Company Residence (State)**

Vendor's principal place of business is in the state of?

3  
5 **Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

Remember this is a MINIMUM discount percentage. So, be sure that the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGHOUT THE LIFE OF THE CONTRACT

CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD NOW OR DURING THE LIFE OF THE CONTRACT.

What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the solicitation specifications document), website, store or shelf pricing or when adding new goods or services to your offerings during the life of the contract? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale.

Must answer with a number between 0% and 100%.



3  
6 **Yes - No**

For the duration of the Contract, Vendor agrees to provide catalog pricing, as defined in the solicitation and below, to TIPS upon request for any goods and services offered on the Vendor's TIPS Contract.

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing Vendor may be applied.

3  
7 **TIPS Administration Fee**

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the Administration Fee, as designated in the solicitation or as otherwise agreed in writing which shall be remitted to TIPS by the Vendor, or the vendor's named resellers, and as agreed to in the Vendor Agreement. I agree that the fee shall not and will not be added by the Vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

3  
8 **Yes - No**

Vendor agrees to remit to TIPS the required administration fee or, if resellers are named, Vendor agrees to guarantee the fee remittance by or for the reseller named by the vendor?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

3  
9 **Yes - No**

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

4  
0 **Years experience in category of goods or services**

Company years experience in this category of goods or services? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.

4  
1 **Resellers:**

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).

<b>4</b> <b>2</b>	<b>Pricing discount percentage are guaranteed for?</b> Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award? <input type="text" value="YES"/>
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<b>4</b> <b>3</b>	<b>Right of Refusal</b> Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion? <input type="text" value="Yes"/>
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<b>4</b> <b>4</b>	<b>NON-COLLUSIVE BIDDING CERTIFICATE</b> By submission of this bid or proposal, the Bidder certifies that:  1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;  2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:  3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;  4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.  Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.
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<b>4</b> <b>5</b>	<b>CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?</b> Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO  If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS. The Form CIQ is one of the attachments to this solicitation.  There is an optional upload for this form provided if you have a conflict and must file the form <input type="text" value="No"/>
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<b>4</b> <b>6</b>	<b>Filing of Form CIQ</b> If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above? <input type="text" value="No response"/>
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<b>4</b> <b>7</b>	<b>Regulatory Standing</b> I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question. <input type="text" value="Yes"/>
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4  
8

**Regulatory Standing**

Regulatory Standing explanation of no answer on previous question.

*No response*

4  
9

**Antitrust Certification Statements (Tex. Government Code § 2155.005)**

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

## Suspension or Debarment Instructions

### Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participants,” “person,” “primary covered transaction,” “principal,” “proposal” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.



**5**  
**1** **Suspension or Debarment Certification**

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

**5**  
**2** **Non-Discrimination Statement and Certification**

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

**5** **2 CFR PART 200 Contract Provisions Explanation**

**3** Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

**5** **2 CFR PART 200 Contracts**

**4** Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

**5** **2 CFR PART 200 Termination**

**5** Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

**5 6 2 CFR PART 200 Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

**5 7 2 CFR PART 200 Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

**5 8 2 CFR PART 200 Federal Rule**

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?



**5 2 CFR PART 200 Procurement of Recovered Materials**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

**6 2 CFR PART 200 Rights to Inventions**

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

**6 2 CFR PART 200 Domestic Preferences for Procurements**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, class, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

**6 2 2 CFR PART 200 Ban on Foreign Telecommunications**

Federal grant funds may not be used to purchase equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use "covered telecommunications", as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

**6 3 Certification Regarding Lobbying**

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

**6 4 If you answered "I HAVE lobbied" to the above Attribute Question**

If you answered "I HAVE lobbied" to the above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

**6  
5 Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

**6  
6 ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?**

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.



**6** **Indemnification**

**7**

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

**6** **Remedies**

**8**

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

**6** **Remedies Explanation of No Answer**

**9**

**70 Choice of Law**

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.  
THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

**71 Venue, Jurisdiction and Service of Process**

Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Do you agree to these terms?

**72 Infringement(s)**

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

**73 Infringement(s) Explanation of No Answer**

**74 Contract Governance**

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

7  
5

## Payment Terms and Funding Out Clause

Payment Terms:

TIPS or TIPS Members shall not be liable for interest or late payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

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6

## Insurance and Fingerprint Requirements Information

### Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

### Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at [NCJU@txdps.state.tx.us](mailto:NCJU@txdps.state.tx.us) and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees



## Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

**NONE (Section A)** of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

**OR**

**SOME (Section B)** or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

None

**7** **Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

**8** SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

**7** **Texas Government Code 2270 Verification Form**

**9** Texas Government Code 2270 Verification Form

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Our entity further certifies that it is is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

**8** **Logos and other company marks**

**0** Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

- \* Your Vendor Profile Page of TIPS website
- \* Potentially on TIPS website scroll bar for Top Performing Vendors
- \* TIPS Quarterly eNewsletter sent to TIPS Members
- \* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

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**Solicitation Deviation/Compliance**

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

Yes

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**Solicitation Exceptions/Deviations Explanation**

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

From Attached Addendum: This ADDENDUM OF EXCEPTIONS (“Addendum”) is between Omega Labs Inc. dba Boom Learning, 9805 NE 116th ST Suite #7198, Kirkland WA 98034 (the “Licensor”) and \_TIPS\_ (the “Educational Agency”) and modifies the Vendor Agreement (“Agreement”), which Agreement has an effective date of June 2, 2020. RECITALSA. The Educational Agency seeks technology to assist in the delivery of education and related support to its students;B. Licensor has demonstrated expertise in providing a platform as a service (“Boom Learning”) for delivering instructional content (“Boom Cards”) and well as a marketplace for obtaining instructional content (collectively the “Boom Services”), has represented that it has the requisite knowledge, skill, experience, and other resources necessary to perform such services, and is desirous of providing suchservices for the Educational Agency; C. The Educational Agency and Licensor wish to execute the Agreement, but the Agreement requires modification to match the platform being delivered to ensure both parties can legally and appropriatelybenefit from the Agreement. In the event of a conflict between the Agreement and this Addendum, the terms of this Addendum will prevail.NOW THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Addendum by this reference, and the mutual covenants contained herein, the parties agree as follows:1. Indemnification:This modifies The Indemnification provision of the Agreement.Such warranty and indemnification shall not extend to user generated content created by District. 2. Employees: This modifies the Safety Measures and Smoking provisions of the Agreement.Licensor operates on a strictly remote basis. Licensor’s employees work from home and Licensor cannot regulate its employees in their homes. However, Licensor warrants that should Licensor’s employees enter the EA’s premises, Licensor’s employees shall not engage in unsafe practices and shall not smoke.3. Insurance: This modifies \_the Insurance provision of the Agreement.3.1.Licensor is a fully remote company and operates off-site exclusively. 3.2.Licensor obtains Worker’s Compensation for employees in the states or territories where they work as required by local law.3.3.Licensor provides the insurance coverages summarized in EXHIBIT A to this Addendum. By signing this agreement, Educational Agency agrees that it has determined that such coverages are sufficient considering the services to be performed.IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the last date written below.

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**Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

No



**8 4 Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

This ADDENDUM OF EXCEPTIONS ("Addendum") is between Omega Labs Inc. dba Boom Learning, 9805 NE 116th ST Suite #7198, Kirkland WA 98034 (the "Licensor") and \_TIPS\_ (the "Educational Agency") and modifies the Vendor Agreement ("Agreement"), which Agreement has an effective date of June 2, 2020. RECITALSA. The Educational Agency seeks technology to assist in the delivery of education and related support to its students;B. Licensor has demonstrated expertise in providing a platform as a service ("Boom Learning") for delivering instructional content ("Boom Cards") and well as a marketplace for obtaining instructional content (collectively the "Boom Services"), has represented that it has the requisite knowledge, skill, experience, and other resources necessary to perform such services, and is desirous of providing such services for the Educational Agency; C. The Educational Agency and Licensor wish to execute the Agreement, but the Agreement requires modification to match the platform being delivered to ensure both parties can legally and appropriately benefit from the Agreement. In the event of a conflict between the Agreement and this Addendum, the terms of this Addendum will prevail.NOW THEREFORE, in consideration of the foregoing, which are incorporated into and made a part of this Addendum by this reference, and the mutual covenants contained herein, the parties agree as follows:1. Indemnification:This modifies The Indemnification provision of the Agreement.Such warranty and indemnification shall not extend to user generated content created by District. 2. Employees: This modifies the Safety Measures and Smoking provisions of the Agreement.Licensor operates on a strictly remote basis. Licensor's employees work from home and Licensor cannot regulate its employees in their homes. However, Licensor warrants that should Licensor's employees enter the EA's premises, Licensor's employees shall not engage in unsafe practices and shall not smoke.3. Insurance: This modifies \_the Insurance provision of the Agreement.3.1.Licensor is a fully remote company and operates off-site exclusively. 3.2.Licensor obtains Worker's Compensation for employees in the states or territories where they work as required by local law.3.3.Licensor provides the insurance coverages summarized in EXHIBIT A to this Addendum. By signing this agreement, Educational Agency agrees that it has determined that such coverages are sufficient considering the services to be performed.IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the last date written below.

**8 5 Felony Conviction Notice**

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

B. Firm not owned nor operated by felon; per above

**86 If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)
2. The named person's role in the firm, and
3. Details of Conviction(s).

No response

**87 Long Term Cost Evaluation Criterion # 4.**

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation". Points will be assigned to this criterion based on your answer to this Attribute. Points are awarded if you agree not increase your catalog prices (as defined herein) more than X% annually over the previous year for the life of the contract, unless an exigent circumstance exists in the marketplace and the excess price increase which exceeds X% annually is supported by documentation provided by you and your suppliers and shared with TIPS, if requested. If you agree NOT to increase prices more than 5%, except when justified by supporting documentation, you are awarded 10 points; if 6% to 14%, except when justified by supporting documentation, you receive 1 to 9 points incrementally. Price increases 14% or greater, except when justified by supporting documentation, receive 0 points.

increases will be <11% annually per question

**88 Required Confidentiality Claim Form**

Required Confidentiality Claim Form  
This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you. Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at [rick.powell@tips-usa.com](mailto:rick.powell@tips-usa.com)

**89 Choice of Law clauses with TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

Agreed

**90 Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

Agreed

**9 1 Automatic renewal of contracts or agreements with TIPS or a TIPS member entity**

This clause **DOES NOT** prohibit multiyear contracts or agreements with TIPS member entities. Because TIPS and TIPS members are governmental entities subject to laws that control appropriations of funds during their fiscal years for contracts and agreements to provide goods and services, does the Vendor agree to limit any automatic renewal clauses of a contract or agreement executed as a result of this TIPS solicitation award to not longer than "month to month" and at the TIPS contracted rate.

**9 2 Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

**Agreement is a required condition to award of a contract resulting from this Solicitation.**

**9 3 Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

**9 4 Required Vendor Sales Reporting**

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. Please refer to the TIPS Accounting FAQ's for more information about reporting sales and if you have further questions, contact the Accounting Team at [accounting@tips-usa.com](mailto:accounting@tips-usa.com). The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

**9 5 Upload of Current W-9 Required**

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.









**Required Confidential Information Status Form**

Omega Labs Inc. DBA Boom Learning

Name of company

Mary E. Oemig - CEO

Printed Name and Title of authorized company officer declaring below the confidential status of material

9805 NE 116th ST #7198 Kirkland WA 98034 833-969-2666

Address City State ZIP Phone

**ALL VENDORS MUST COMPLETE THE ABOVE SECTION**

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you must attach a copy of all claimed confidential materials within your proposal and put this COMPLETED form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission. (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.


**ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW.**

**OPTION 1:**

**I DO CLAIM parts of my proposal to be confidential and DO NOT desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.**

**IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OF TOTAL PAGES THAT ARE CONFIDENTIAL.**

**ATTACHED ARE COPIES OF 4 PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.**

Signature  Mary Oemig (May 21, 2021 07:18 PDT)

Date May 21, 2021

**OR**

**OPTION 2:**

**I DO NOT CLAIM any of my proposal to be confidential, complete the section below.**

**Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.**

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





### Service Levels and Support

- A. Additional training requirements, services, and/or materials that are necessary to successfully implement services:
- i. Internet connection
  - ii. Modern browser for web-based access
  - iii. Free app player for tablet access
- B. Included Services: Any additional training requirements, services, and/or materials that are included in the services cost:
- i. Personalized customer support is available Monday-Friday 8:00AM-5:00PM PST via email ([help@boomlearning.com](mailto:help@boomlearning.com)) or phone (**833-969-2666**). Email support is typically answered in 1-5 business days depending on the urgency and priority. Support tickets can also be submitted from the Help Center page on the Boom Learning website (<https://wow.boomlearning.com/help>).
  - ii. Self-service support portal is available 24 hours a day, 7 days a week (<https://help.boomlearning.com/en/support/home>). This portal provides access to Boom Learning's database of articles and guides regarding the services and how to utilize different service features.
  - iii. Video tutorials for the services are available 24 hours a day, 7 days a week on the official Boom Learning YouTube channel (<https://www.youtube.com/c/BoomLearning>).
- C. Because of conditions beyond our control, including devices selected by the schools, IT settings, Internet outages, security protocols, and such, we cannot guarantee a service level. We can inform you that we have better than 99% uptime; however, this is not a guarantee or warranty that you will experience 99% uptime. Scheduled downtimes, which are rare, occur during times when most schools are out on break.

We use our best efforts to promptly resolve any technical issues within our control or within the control of our subcontractors. We will use reasonable efforts to assist you in resolving technical issues that we determine are within your control, but we cannot guarantee or warranty that any technical issue within your control will be resolved to your satisfaction. In the event you are unable to use the product because of unresolvable technical issues, you may terminate the contract effective at the end of the current month at any time on written notice to [help@boomlearning.com](mailto:help@boomlearning.com) and receive a refund of the remaining term of the license (prorated monthly for memberships) of your purchase.

# Boom Learning News

teaching made easy

☰ Menu

## Privacy

Effective October 15, 2020 ([see archived versions](#))

SEE ALSO [Terms of Service](#)

## Guiding Principles



- We want all kids to achieve at their highest possible level.
- We expect kids to make mistakes.
- We believe kids are entitled to leave their mistakes behind.
- We believe kids have a right to veto their presence online.
- We believe in transparency and feedback.

*We wish it were enough to state these principles. Alas it is not. Make yourself comfortable...we've got a lot to cover.*

This policy applies to data processed by our Services and is part of our [Terms of Service](#). If you work for a school or other organization, you must have [authority](#) to enter into this agreement. It sets forth your roles and responsibilities, because guarding Student Data is a shared responsibility.

We will not make material changes to the terms, including this Privacy Policy, without first providing notice via our newsletter service (ActiveCampaign). Mere reorganization of components between cross-referenced documents nor the addition of detail previously stated in our FAQs that does not alter fundamental commitments does not constitute a material change.

This Privacy Policy should be enough for most schools. We do have a Terms Addendum for Government Entities and an EEA/Canada Addendum (DPA) at the bottom of this document that you can download, sign and return if required for your district. We are [signatories](#) to several state Student Data Privacy Consortium Alliance agreements.

**CUSTOMERS IN THE EUROPEAN ECONOMIC AREA (EEA) MUST ENTER INTO AN ADDITIONAL DATA PROTECTION ADDENDUM (“DPA”).**

## Table of Contents

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## We Exist to Educate

### Educational Purpose

We (Omega Labs Inc. dba Boom Learning) have the following educational purposes (the **Services**):



- To enable **Educators** to make, share, buy, sell and assign awesome digital educational resources (Boom Cards) that mostly grade themselves;
- To provide Educators with rapid student performance reporting to give you more time to teach students, intervene faster with those who need it, accelerate those who need it, and occasionally read a long privacy policy (or better yet a rollicking good book).

These are services that take place at the direction of Educators for which Educators would otherwise use their own employees or agents and that aid in delivery of educational activities. We use any personal information we receive from you (**Educator Data**), as well as any student personal information, student records, or student-generated content (**Student Data**) we receive from your students, to fulfill those purposes. Collectively we call this **User Data**.

## We Are Directed To Educators

Boom Learning is a platform marketed and directed to Educators for use with students, who may be minors. Educators create accounts for students under their charge. Although minors may use Boom Learning, a responsible adult Educator must accept terms and set up accounts on the minor's behalf. Parents and legal guardians who are homeschooling or afterschooling their children may use the product as Educators.

## Service Provider, Not Data Seller

**We do not sell User Data.** We are a service provider of data processing and mini-app creation services delivered to Educators.

## Your Rights and Choices

You have rights regarding your User Data under a variety of laws (CCPA for California residents; GDPR for EU residents; and many more).

You've already read about our business purposes. By continuing to read this policy you will learn:

- The categories of personal information we collect about you.
- The categories of sources for the personal information we collected about you.
- Subprocessors we use and the business purpose(s) for which we use them.
- How you may obtain information about the specific pieces of information we collected about you.

## Non-Discrimination (California Residents)

We will not discriminate against California residents for exercising your rights under the California Consumer Privacy Act (CCPA).

## Information Controls and Requests

## For Educators

We provide Educators with a number of controls that may be used to retrieve, correct, delete, or restrict User Data. We don't analyze, process, serve or transfer Student Data until you instruct us to do so by opening an account, adding students, and assigning resources to them.

As an Educator, you may update or change most information you have provided to us about you in [My Settings](#). There is a fee for changing your Pen Name once you have published your first resource to the store.

We will not delete information necessary to be maintained for our business purposes, including but not limited to:

- at least one login authenticator if you are maintaining an active account;
- Boom Cards decks you have sold to other Educators;
- logs for detecting security incidents, fraud, deception and malicious and illegal activity;
- records for internal uses, including debugging and repairing errors, transaction and payment records, and the like;
- data legally required to be maintained (such as tax-related data).

## For Parents and Students

Parents and students may review Student Data by either reviewing the student dashboard with the student or asking the Educator to show the teacher dashboard for that student.

If you are a student or parent, your Educator was supposed to get consent from you, in a manner consistent with law and school policy, before assigning Boom Cards. Speak to your Educator if you wish to revoke consent. Parents who contact us to review or delete Student Data will be redirected to the Educator. We will not release information to a person other than an Educator, unless we are provided satisfactory proof of a legal right to review or delete student information. We will respond to any request from your Educator authorizing us to make disclosures to you.

## Data Consents and Data You May Not Collect

To the extent permitted by applicable law,

You agree to indemnify Boom Learning for any liability arising from your actions in assigning a resource that collects information in violation of a law that applies and for any failure by you to provide a student with required information regarding their rights. If in doubt, consult your legal counsel and governing body.

## Your Obligations with Respect to Children and Students

We allow Educators to create accounts for K-12 students. We treat payment and verification of email address as proof of adult status. Educator accounts are for adults only. If we learn that a minor

has created an Educator account, we will take steps to delete the information as soon as possible.

You must have a legal right to set up an account for students, such as being the parent or legal guardian of a student, the right to act *in parentis loci* under the Family Educational Rights and Privacy Act (FERPA) (as required by the Children's Online Privacy Protection Act (COPPA), or a signed consent from the parent or legal guardian of the student.

Schools agree and understand that their legal right to engage us to process student data on their behalf arises under the school official exception of FERPA. Pursuant to that exception, Boom Learning performs a service for which a school would otherwise use employees and Boom Learning operates under the control of the school with respect to the use and maintenance of education records for a legitimate education interest. We use student data solely for the purpose of fulfilling our duties and providing and improving services under this agreement.

## Data You May Not Collect

Schools must exercise their right of consent under FERPA within the confines of the Pupil Rights Amendment (PPRA) for sensitive data. You may not assign a resource that collects sensitive data. Depending on your governing jurisdiction, sensitive information 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. You are solely responsible for understanding what you may or may not assign in your jurisdiction.

## For Therapy Interventions

Your collection of Student Data for health therapy interventions must be consistent with the Health Insurance Portability and Accountability Act (HIPAA), including meeting the requirements of consent and taking extra steps (pseudonyms, private rosters, and more) to protect the medical information of students.

## User Data We Collect

We collect some User Data automatically and some you (or your school) provide to us. The next section covers the data we collect, the source of the data, and to which, if any, subprocessors, if at all, it is disclosed, and for which business purpose.

We collect certain data elements to provide the services (detailed [here](#)). Many of those data elements are optional. Author store names, avatars, descriptions, product titles, prices, descriptions, and product contents are public and not confidential if published to the Store.

## Data Confidentiality

Student personal information, other than the user nickname for a classroom roster, is deemed confidential. Teachers may optionally disable visibility of a classroom roster to students. Teacher names, avatars and descriptions are displayed to



students and teacher selected colleagues. All other information provided by or to teachers is confidential. All confidential information requires authentication to access.

Confidential data is disclosed as follows:

- The information of students to the Educator who created the student account or the school or organization employing that Educator.
- The information of students to parents and legal guardians who observe the student dashboard.
- The information of Educators to the school or organization for whom the Educator works.
- The name of a user redeeming Boom Cards purchased from a marketplace other than the Boom Learning store may be disclosed to to the originating seller or marketplace if there is evidence that the product may not have been validly purchase to verify and determine whether the product redeemed was validly purchased. Such disclosure is only after an investigation determining the user may have violated copyright law and licensing terms.

We use subprocessors to support our educational purpose. Our subprocessors have agreed that they process User Data on our behalf and that they do not own, control, or direct the use of the User Data. They also agree to implement technical, physical and administrative measures against unauthorized processing of data and against loss, destruction of, or damage to, data.

Student data stores

Student Data is stored in the Boom Learning database. The Boom Learning database is encrypted in motion and at rest. This database is hosted by (and thus disclosed to) the subprocessors [MongoDB](#) and [Amazon Web Services](#) under obligations of confidentiality and with no right of use of personal data. Information stored in the Boom Learning database is disclosed for the following business purposes: audit, detection, debugging, business operations, and R&D. De-identified User Data information may be used for internal marketing research. Educator Data may be stored in a variety of locations as further described herein.

No advertising, marketing and commercial uses of Student Data

We will not use or disclose Student Data for advertising to students or their families or guardians. We will not build a personal profile of a student, or family member or guardian, other than for our educational service provided to the Educator. We do not use Student Data to inform, influence, or enable marketing, advertising, or for other commercial efforts unrelated to our educational service provided to the Educator. We do not use the Student Data for the development of commercial products or services other than as necessary to provide and improve the service provided to the Educator. We will allow a successor entity to maintain Student Data, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for previously collected Student Data.

Is not a marketing, advertising or commercial purpose for Boom Learning to use and disclose Student Data to a parent or eligible student who requests a service or product from Boom Learning and provides express consent to the use or disclosure of Student Data by Boom Learning for the purposes of provided the requested product or service.

## Information You Provide Us

When discussing subprocessors, we identify the data purpose for which we employ each using these categories of uses:

- audit and session logs and related analytics (**audit**);
- detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecution of perpetrators (**detect**);
- error identification and repair (**debug**);
- services performed on our behalf, such as customer service, identity verification, order fulfillment, payment processing, personalized learning recommendations, user education, user analytics (**business operations**);
- internal research for improvement or demonstration and activities to improve, upgrade, or enhance our services (**R&D**); and
- advertising or marketing services (**marketing**).

## Identifiers and Authenticators

All user accounts, Educator and Student, are authenticated. Why? Because allowing students to interact with random strangers online is a big ewww!

Educators can choose the authentication method: (a) username and password, (b) e-mail address and password, or (c) a third-party authentication service. Educators can see their connections and add, delete, or change connections by going to [My Settings](#) for adult accounts. To update a student account, the Educator must delete the student account to disconnect third-party authentication, edit the account to add a username, or [contact us](#) to set up or remove e-mail address authentication.

If you choose a third-party authentication service you will be sharing information with us from that third-party. The third-party authenticator may collection information about your use of our service. Select your third-party authenticator wisely.

Source and Direction	Data Collected or Stored	Accounts
You to Boom Learning	Identifiers (nickname, username, persistent identifier, encrypted password, email address)	adults & students
<a href="#">Google</a> (source) to Boom Learning	Identifiers (name, email address, persistent identifier, profile image)	adults & students
<a href="#">Microsoft</a> (source) to Boom Learning	Identifiers (name, email address, persistent identifier, profile image)	adults & students
<a href="#">Facebook</a> (source) to Boom Learning	Identifiers (name, email address, persistent identifier, profile image) <b>being discontinued</b>	adults

The sources of these types of data are the Educator and/or the Educator's chosen third-party authenticator.

Additional Personal Information: including address and employment

**Educator name and description:** We store your Educator name, profile picture, and description. The information you include in your Educator profile is disclosed to your students and their parents. You provide this information.

**Contact Information and Teaching Profile:** There is a variety of optional information that we store if you give it to us, such as your grade levels and subjects taught.

We may record your personal email, postal address, and telephone number and/or your school name, postal address, and telephone number. You provide us with your personal contact information. We may obtain your school name and address from you, your school or publicly available sources. We keep records of your purchases.

Contact methods for adults and uses of Educator Data

We contact adult users via email in a variety of ways: (a) directly from our hosted email accounts, (b) through our third-party support desk platform, (c) with transactional email (such as notices, password resets, expiration notices, and such) – these are not opt out, and (d) through our news provider – from which we provide educational information about our services and personalized learning recommendations. Educator accounts are added to our educational messages and personalized learning recommendations newsletters upon sign-up (with the option to opt-out). Product users must opt-in to marketing messages. Our news provider emails include a link allowing you to opt into and out of a variety of types of messages so you can receive only what you need. Certain accounts, such as seller accounts, are required to subscribe to special email lists to receive seller account services.

Our email services providers may supply us with a range of information about your communications with us, including IP addresses, your country, state or province, history of reading or receiving newsletters, and your approximate location. The source of this information is your interactions with the email service and/or third-parties.

Educator Data is stored in (and disclosed to) the following additional service providers:

Provider	Business Purpose
<a href="#">Intuit</a>	business operations, detect, audit
<a href="#">Freshworks</a>	business operations, detect, debug, R&D, marketing



Provider	Business Purpose
<a href="#">Stamps.com</a>	business operations, marketing
<a href="#">SparkPost</a>	business operations, audit, detect
<a href="#">Microsoft</a>	business operations, R&D, marketing, audit, detect, debug
<a href="#">ActiveCampaign</a>	business operations, R&D, audit, detect, debug, marketing
<a href="#">Atlassian</a>	audit, debug, R&D
<a href="#">Poeta Digital</a>	audit, debug, R&D
<a href="#">A4 Technologies</a>	audit, debug, R&D

**Feedback and Ratings:** We store feedback you give. Feedback is a private communication between you and a seller. We store ratings you give. Ratings and accompanying comments are public information. You may edit any ratings you give after they have been published. Feedback you provide via our support Helpdesk may also be stored in our systems for debugging and development management.

**Student Information:** You create student accounts from within your Educator account. You control the Student Data; we process it on your behalf. When you create a student account you are acting in the role of a parent for the purposes of verifications and consents required under law (including FERPA, GDPR, and COPPA as applicable). You must have all legal consents required of you to add a student before creating a student account. You must have an account and a verified working email address to add students.

You can always work with students without collecting Student Data by using Fastplay (see your Library actions to create Fastplay pins). To receive student reports, you must provide and verify an teacher e-mail address. Student Data is provided to us by you (username, nickname, email address, persistent identifier, password) or by the student (task performance data).

When you assign an educational resource using a method other than Fastplay pins, we collect information about student performance on that resource and report it back to you for your educational use. Student performance data includes information such as resources played, cards played, time to play a resource, time to play a card, correct answers, incorrect answers and other student actions with respect to a card. When a school purchases an account, the school can transfer an account with students from one teacher to another (for example, during parental leave).

You should understand that a classroom worker (volunteer or paid) can likely determine who a student is in real life (“**IRL**”) from the nickname. You are responsible for ensuring any classroom

workers follow your organization's and locale's rules, regulations, and laws regarding access to Student Data.

**Author/Seller Information:** We store your seller name, avatar and profile (if you have one) and make those available to the public. We store information you provide about resources you create, including name, grade levels, keywords, and content and make it public for resources listed in a store or shared. We may further share your public information on Facebook, Twitter, Pinterest, Instagram, Google, or any other appropriate public marketing service. We may announce publicly top selling products, top sellers, and new sellers. You may contact us to be omitted from those announcements.

We store the fonts, images and sounds you upload; and videos to which you link. We store feedback responses you give.

### Payment and Purchasing History

To make a payment you will need to provide the information requested by one of our payment processors, such as your name, account number, and verification numbers. Our payment processors use Payment Card Industry Security Data Security Standard (PCI DSS) compliant processes to process payments. They process payments directly. We do not have access to or store your full payment card details. We do have some information, such as your email address, approximate location, and name and payment and purchase history. You can use [My Settings](#) to remove a credit card stored by Stripe. You may edit your Paypal information from your Paypal account.

You may pay by check by [contacting us](#) for an invoice. If you pay by purchase order or check, we will store your payment information and tax exemption information, if any, in our accounting records. In some cases, your information may be shared with our accountant or with tax authorities.

We record the authors you redeem, purchase and assign. These allow us to make adaptive and personalized learning recommendations to you based on you and your students' educational needs. We do not provide personalized recommendations from third parties in exchange for compensation.

We store records of your sales. If you reach certain thresholds, we may request and store your taxpayer identification number. We also store information you give us to enable us to pay you. Because Boom Cards are effectively small applications unique to our platform, there is no ability to export created resources in a playable format. However, you may use the print feature to create .pdf versions of your creations.

Provider	Purpose
<a href="#">Intuit</a>	business operations
<a href="#">Stripe</a>	business operations
<a href="#">PayPal</a>	business operations
<a href="#">Microsoft</a>	business operations
<a href="#">The Hagen Firm</a>	business operations
<a href="#">BECU</a>	business operations

## Information We Receive From Use of Our Services or Third-Parties (network activity and geolocation)

We describe how we use cookies and similar tracking tools in our [Cookie Policy](#).

**All Users:** For all users, we record the account created timestamp, last login timestamp, the type of device being played (i.e., iOS or Android, but not the device ID), the app version (if playing a Boom Cards app), the OS version of the device, the browser type and version, decks redeemed or purchased, decks made, points available, and school affiliation. As necessary, that information may be further disclosed for these purposes:

Provider	Purpose
<a href="#">Freshworks</a>	business operations, audit, detect, debug, R&D
<a href="#">Microsoft</a>	business operations, audit, detect, debug, R&D
<a href="#">Atlassian</a>	business operations, audit, detect, debug, R&D
<a href="#">Poeta Digital</a>	business operations, audit, detect, debug, R&D
<a href="#">A4 Technologies</a>	business operations, audit, detect, debug, R&D
Your Employer	audit, detect and business operations – applies to accounts purchased by your employer or having a domain associated with your employer

**Educators:** We may store a referral code if you clicked one to arrive, which may tell us which user or author referred you or whether you arrived from a particular campaign. We do not provide your name to the referring party. We keep records of the type of membership you have, expiration dates, newsletter enrollment, purchase and payment history. We keep track of which users follow you or redeem your products. We keep track of newsletter clicks, opens and site actions to better serve you. This information may be sourced from our disclosed to:

Provider	Purpose
<a href="#">Freshworks</a>	business operations, audit, detect, debug, R&D, marketing
<a href="#">Microsoft</a>	business operations, audit, detect, debug, R&D, marketing
<a href="#">Atlassian</a>	audit, detect, debug, R&D
<a href="#">Poeta Digital</a>	audit, detect, debug, R&D
<a href="#">A4 Technologies</a>	audit, detect, debug, R&D



Provider	Purpose
<a href="#">Google</a>	audit, detect, marketing research (advertising features are turned off, search console is on)
<a href="#">ActiveCampaign</a>	business operations, audit, detect, debug, R&D, marketing

We have selected ActiveCampaign because their privacy practices and policies are consistent with the needs of the education market. We use [ActiveCampaign](#) on our website. We do not use ActiveCampaign site tracking. We do tell ActiveCampaign about key user actions for adult users. This allows us to provide just-in-time support and to run our recommendation engine for our adult users. We provide you with a variety of tools to opt in and out of how we use ActiveCampaign data. Options include notices only, newsletters about teaching, creating, and selling Boom Cards. Any marketing use of Educator ActiveCampaign data is opt-in, and make include information about Boom Learning profession development and Boom Cards resources of interest to the Educator. We may use aggregate ActiveCampaign data to evaluate and plan external marketing, but will not use that data to target you specifically on an advertising media that is not ActiveCampaign (for example we will not upload your ActiveCampaign information to deliver a targeted ad to you on Facebook). You can always request to see your full ActiveCampaign data map and to have us update or delete information in the map.

### Additional Vendors

We use these additional providers in support of our operations. They may collect information and provide it to us but we do not provide personal information to them.

**WordPress:** When you click on a link hosted at [blog.boomlearning.com](http://blog.boomlearning.com), WordPress will collect technical data about you, your interactions with the site, and your inferred location. We do not enable ads on our blog.

**Facebook:** Your participation in our Facebook groups and messaging us through Facebook is optional. Comments sent to us through our Facebook Page are forwarded to our Help Center (Freshworks). Your participation with us through Facebook is governed by Facebook’s terms.

**YouTube and/or Vimeo:** If you select a resource that included a video hosted by YouTube or Vimeo, the hosting provider may place a cookie and/or collect data about the use. We take steps to ensure that such collection, if any, is anonymous and ad free, but we cannot control these vendors.

Provider	Purpose
<a href="#">Automattic</a> (WordPress)	business operations, marketing
<a href="#">Facebook</a>	business operations, marketing

## Advertising Disclosure

We do not serve advertisements on the Boom Learning platform to Educators or students. We do NOT advertise to students through any providers.

If you discover author created content that appears to be an advertisement, please report it to use immediately as an abuse of our terms. Boom Learning is a “for pay”, not advertising, supported service.

Aspects of the Boom Learning platform provide adults with instructional materials recommendations based on the teacher choices made for the student populations served by the teachers. Such recommendations are in furtherance of our shared educational purpose and do not constitute use for an advertising, marketing, or a commercial purpose. Further, for the absence of doubt, the parties agree that it shall not constitute an advertising, marketing, or commercial purpose for Boom Learning to inform Educators of new Boom Cards or Boom Learning features or functionality.

We allow adult customers to “opt in” to receive email marketing from us or others.

Like other business, we advertise to adults to attract new customers. All such advertisements are placed with third-party providers, such as blogs, newsletters, magazines, search sites or social sites. We receive analytics on the performance of those advertisements from the services with which we place the ads. These companies may use cookies and similar technology to collect information about your interactions with the Services and other websites and applications. We do not use their pixels or other tools that allow them to track your behavior at <https://wow.boomlearning.com>. Your interactions with such ads are governed by the terms of the site on which they are displayed.

## The Keeping and Deleting of Information

At any time Educators may delete a student, or [contact us](#) to request that we delete a student or your account in the event you are unable to use the self-help tools. You agree to give us 10 days so we can confirm that the person making the request is you and has the right to delete the account. Deletion cannot be undone.

To transfer an account from one teacher to another, or to receive a machine-readable data dump from an account, you must [contact us](#). We can only make full account transfers between employees of the same purchasing entity.

For account transfers and or deletion requests, we may require multiple indicia of identity and authority before fulfilling the request.

**To minimize privacy risk, we schedule deletion of stale accounts as follows:**

- student accounts 90 days after the associated paid Educator membership expires – we assume these students will have a new teacher in the next session; renew early to avoid.
- student accounts 180 days after the last Educator login for free accounts – we assume these are homeschool or small tutor accounts; login in at least once every 179 days to avoid.
- Educator accounts not owned by a school 365 days after last login, at our sole discretion – deletion results in the loss of purchased and redeemed decks, created decks, classrooms, and unused points.

Boom Learning retains copies of all Educator resources sold or shared to serve the recipients.

Deletions take place after the triggering event during the next scheduled data sweep.

## Information Security

### Privacy and Security by Design

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 of a data breach, Boom Learning shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk posed by exposure of the User Data to unauthorized persons.

**Data Minimization.** Boom Learning provides you with choices on the [Data Elements](#) to deliver to Boom Learning. You should exercise those options in light risk of harm to the data subject should data be exposed, taking into account the sensitivity of the data being collected, the risk of exposure, and the potential for harm if exposed. You have the option to [prevent display of directory information](#) to students and parents.

**Data Accuracy/Correction Practices.** Boom Learning provides Educators with the ability to delete data logs to remove data. Educators also have detailed log screens of student answers to evaluate the reliability of data reporting. Parents and students may challenge the accuracy of data by contacting their Educator. Educators may challenge the accuracy of data by contacting [help@boomlearning.com](mailto:help@boomlearning.com) and requesting Technical Support.

**NIST Cybersecurity Framework.** Boom Learning uses privacy by design and industry best practices to protect data, taking into account the nature of the data at risk and the risk of harm to data subjects. Boom Learning has adopted the NIST Cybersecurity Framework as it is updated from time to time as its primary guidepost for selecting and implementing technologies, safeguards, and privacy practices, provided however, that Boom Learning may refer to and implement other protection models where appropriate. Security practices implemented include but are not limited to (a) limiting unsuccessful login attempts, (b) not persisting mobile app data, (c) remote log out for devices for Educators in the event of a lost, missing or stolen device, (d) audit logs for activities posing a risk of breach and for actions that require accountability, and (e) enforcing minimum password complexity. Adoption includes periodic risk assessment practices of our and our subcontractors and subprocessor practices.

**Need to know access.** Boom Learning employees, agents and subcontractors are provided access to User Data on a need to know basis. Those with access to Student Data or Educator financial data are required to pass a background check. Such users are subject to obligations of confidentiality and consistent with the promises and obligations in this Privacy Policy.

**Encryption.** Data is encrypted in transit and at rest using technologies and methodologies specified and permitted by the Secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law 111-5. Secure transport layers are used to prevent unauthorized access.

**Authenticated Access.** Data is only accessible through authenticated accounts. We require passwords at both the Educator and Student level to keep data safe. Passwords are encrypted. We cannot see your password or your students' passwords. We provide tools in the app for you to reset passwords. Student passwords are set and reset by teachers. Use good password practices to keep your students safe. Our team members use password managers and you should also. Student Data is only accessible for Educators with confirmed email addresses.

**Protected Data Stores.** The Primary data store is the Boom Learning database. This database contains the Student Data and Educator Data. It is hosted by (and thus disclosed to) the subprocessors [MongoDB](#), which in turn is hosted on [Amazon Web Services](#) under obligations of confidentiality and with no right of use of Protected Data. Protected Data is encrypted in transit and at rest, stored in secure facilities and with firewall protection. See [MongoDB Security Policy](#) and [AWS data center controls](#). Additional Educator data may be stored in Microsoft, ActiveCampaign, Freshworks, Stripe, PayPal, or Quickbooks online data stores. All subprocessors are selected based on their agreement to secure data in a manner consistent with these terms.

**Subprocessors and subcontractors.** Boom Learning engages subcontractors (acting in roles similar to employees) and subprocessors (cloud-based service providers) to process User Data. This Privacy policy details the current subcontractors and subprocessors. With respect to each subcontractor that receives User Data from Boom Learning, Boom Learning will enter into a written agreement under which the subcontractor must participate in annual privacy and security training, be subject to background checks if the subcontractor has access to Student Data, and use security measures consistent with those imposed on Boom Learning. With respect to each subprocessor that receives User Data from Boom Learning, Boom Learning will enter into a written agreement under which the subprocessor agrees it has no right of access, use or disclosure to the Protected Data and subprocessor applies security measures consistent with those imposed on Boom Learning. Boom Learning will carry out adequate due diligence to ensure that any subcontractor or subprocessor can meet its obligations to Boom Learning. Boom Learning will remain responsible for its compliance with its data protection obligations and for any acts or omissions of a subcontractor or subprocess that cause Boom Learning to breach any of its data privacy and security obligations to you.

**Training.** All employees and subcontractors who are granted authorization to access data are trained annually on Boom Learning's security and privacy responsibilities and obligations, including threat awareness, threat protection, best security practices and safeguards, and company policies and procedures. Training is conducted more frequently as a response to evolving threats within the education community. Boom Learning provides users with information bulletins about how to maintain the security of Protected Data. Users who opt out of our newsletters will not receive such bulletins. Educator may [contact us](#) if there are security concerns or questions.



**Portable Devices.** You acknowledge and agree 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. In the rare instance that Student Data is temporarily stored offline, the data is stored encrypted at rest.

**Verification.** You may [contact us](#) for assistance to learn which specific personal information we have collected about you and for help deleting personal information. We will require that you (a) provide sufficient information to allow us to reasonably verify that you are the person about who we collected the personal information or an authorized representative; and (b) describe your request with sufficient detail that allows us to properly understand, evaluate, and respond to it. We cannot respond a request for which we cannot verify that you have the authority to make the request. Requests by a person who is not the account holder or owner will require the consent of the account holder.

**Legal authority data requests.** We are required to disclose Personal Information in response to lawful requests by legal authorities, including to meet national security and law enforcement requirements. In the event a legal authority asks to access your data, we will direct the requestor to you and will not take action without your prior authorization, unless legally compelled to do so. If we are legally compelled to respond to such a request, we will promptly notify you and provide you with a copy of the request unless legally prohibited from doing so. If a legal authority is asking for information about a student, the account holder agrees to pass on the notification to the student's legal guardian and indemnifies us for failing to do so. *Between the words "and" and indemnifies us" must add "to the extent permitted by applicable law,*

**Continuous backups.** Boom Learning performs continuous data backups for system failure and disaster recovery purposes. Backups are encrypted. Backups are not used or accessed to recover Educator deleted data. If you say we should delete it, we take you at your word. Backups are stored only for so long as necessary to serve their recovery purpose.

## Student Safety is a Shared Responsibility

We use appropriate physical, electronic, and managerial processes and procedures to safeguard data against unauthorized access and use, including designating and training the individuals responsible for ensuring the security of the data.

If you add students to your account, you also have a responsibility to use appropriate physical, electronic, and managerial processes and procedures to safeguard Student Data against unauthorized access and use, including designating and training the individuals responsible. Passwords you assign to students should be appropriate to their age in complexity, with older students expected to master more complex passwords.

You agree you are responsible for your secure use of Boom Learning, including providing or obtaining adequate training on the use of secure authentication, the dangers of open networks, and providing your employees with secure networks on which to use Boom Learning. You agree to use passwords for Educator accounts that are adequately secure to prevent intrusion. It is your responsibility to keep your login information confidential.

You will take reasonable steps to ensure the reliability of any of your employees, agent or independent contractors, including volunteers, who have access to Student Data, ensuring access is limited to those with a need to know and access the Student Data and ensuring that all such individuals are subject to obligations of confidentiality.

You agree that any regulatory penalties or other liabilities incurred by Boom Learning in relation to acts that arise as a result of, or in connection with, your failure to comply with your data security responsibilities will count towards and reduce Boom Learning's liability to you.

## Data Breach

### Data Breach

A security incident that rises to the level of a data breach varies by jurisdiction. Typically a breach is an incident of data loss or unauthorized data access that (a) compromises the confidentiality or integrity of the data and in doing so (b) is likely to cause harm to the data subjects impacted. A harm that rises to a breach varies by jurisdiction, but typically includes harms that can be substantial (financial information, account credentials, medical information). It does not include speculative harms, a harm must be reasonably likely. Unauthorized access to data that is encrypted is not a breach if the encryption key is not accessed or acquired. Nor is it a breach for another person at the same entity with a similar confidentiality obligation to the data subject as the account holder to access the User Data. This section is for incidents that constitute a breach.

In the event of a breach of User that contains personal information, we will contact the account holder for the affected individual(s) using the information we have on file. We will provide notice as soon as reasonably possible, provided that we may delay notice if a law enforcement agency determines that the notice will impede a criminal investigation. Such notice will include in plain language What Happened, What Information Was Involved, When It Occurred, What We are Doing, What You Can Do, and For More Information.

Educators will be notified without undue delay and within 7 days of determining that a data breach affecting school User Data has occurred. If the specific jurisdiction in which Educator is based requires a shorter notification period, the school shall provide Boom Learning with that time frame in the Terms Addendum (see the [Terms of Service](#)). We will provide Educators with sufficient information to allow the school to meet any obligations to report or inform students or staff of the breach. In many cases, we do not collect or store information about students that would enable us to contact students or their parents directly.

We will provide notices of breaches to the appropriate regulators where required by law, and we may elect to provide such notice, at our option and in our sole discretion, where not required by law.

Schools that do not want us to provide notice to regulators must complete a Terms Addendum.

## Data Transfers for Our International Customers

Most of our customers are in the United States and Canada. Some people in other parts of the world have chosen to use Boom Learning. We transfer the information you submit or that we gather to the United States for the purposes described in this policy.

Your country may assert oversight over your data or provide you with less protection than this document. By signing up for a Boom Learning account, you acknowledge and accept the risk should the laws of the country in which you reside provide you or your students with less protection than this document with regards to your local government.

For our European Economic Area and United Kingdom customers, please download, sign and return the attached DPA, which includes the standard contractual clauses for data export to the United States. Our Canadian customers who require a data export agreement may use the DPA.



We value our EEA and UK customers' privacy and rights as data subjects. We have appointed Prighter as our privacy representative. If you want to contact us via Prighter or make use of your data subject rights (e.g., request to access or erase personal data), please visit: <https://prighter.com/q/18732339>.

You have the option of referring any complaint to our independent dispute resolution body: [JAMS](#), an alternative dispute resolution provider with locations in the UK and US and online. Any matter referred to JAMS will be administered by JAMS in accordance with JAMS International **Arbitration** Rules. [Online mediation](#) is also an option. The services of JAMS are provided at no cost to you. In certain circumstances and if you are in the EEA, you can invoke the Privacy Shield arbitration process. To learn more about this method of resolution and its availability to you, please click [here](#).

## Who We Are and How to Contact Us

Boom Learning is a trade name of Omega Labs Inc. Our mailing address is 9805 NE 116<sup>th</sup> St Suite 7198, Kirkland WA 98034. You can call us at 833-969-2666. You can [contact us](#) to send us questions about or notifications relating to this policy.

## Changes to This Policy

We will notify you before we make material changes to this policy and give you an opportunity to review and consent to the revised policy before deciding if you would like to continue to use the Services. You can review previous versions of the policy in our [archive](#). Any version of this Privacy Policy 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 Privacy Policy, we encourage you to study it carefully.

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