

Montana Data Privacy Agreement For use with vendors providing student record management services and online applications utilized to deliver services to students.

I. PARTIES:

The parties to this Agreement are the Lockwood School District (hereinafter "District") and Omega Labs Inc. dba Boom Learning (hereinafter "Contractor" or "Contractor").

II. PURPOSE:

District retains Contractor to provide the following services on behalf of the District: Provide a cloud-based platform for the making of digital instructional materials (Boom Cards) and a system for storing said materials, and assigning and recording pupil performance thereon. Contractor shall be free from control and direction over the performance of the services, both under this Agreement and in fact. Except as limited herein, Contractor shall have and exercise full professional discretion as to the details of performance.

III. TERM OF AGREEMENT, NON-EXCLUSIVITY:

This Agreement shall begin on the date of signature and shall run for 3 three years shall expire on June 30, 2023, unless terminated earlier by mutual agreement of the parties. Contractor shall have no expectation of renewal of this Agreement. This Agreement is non-exclusive, meaning that both Contractor and District may contract with any other party for the procurement or provision of investigative services without interference. This agreement supplements Contractor's standard Terms of Service and Privacy Policy and this agreement's terms will prevail in the event of a conflict.

By executing this Agreement, Contractor certifies that District is provided self-help tools to export or delete Protected Information. Deletion is permanent and irreversible. Contractor certifies that deletion results in Protected Information no longer being held, possessed or otherwise available to Contractor or its employees, agents, or subcontractors. This requirement does not apply to pupil-generated content if a pupil chooses to establish or maintain an account with the third party for the purpose of storing that content.

Parents, guardians and eligible pupils have the right to inspect the Protected Information held by the Contractor. Parents, guardians, or pupils should submit to the school principal written request identifying the information they wish to inspect. The principal will make arrangements for access and notify the requesting party of the time and place the information may be inspected. Contractor will cooperate with the School District to accommodate any inspection request. The rights contained in this section are denied to any person against whom an order of protection has been entered concerning a student.

Parents/guardians or eligible pupils may ask the School District to amend Protected Information held by the Contractor they believe is inaccurate, misleading, irrelevant, or improper. They should write the school principal clearly identifying the part of the record they want changed and specify the reason. Contractor will cooperate with the School District to accommodate any amendment request.

If the District decides not to amend the record as requested by the parent(s)/guardian(s) or eligible student, the District will notify the parent(s)/guardian(s) or eligible pupil of the decision and advise him or her of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent(s)/guardian(s) or eligible student when notified of the right to a hearing.

the School District for any damages or costs, including reasonable attorney's fees, which arise out of any gross negligence or willful misconduct by Contractor, its agents and employees concerning its FERPA obligations under this section.

Contractor and the School District along with their employees, agents or representatives will not, use, directly or indirectly, Protected Information for purposes other than the purposes outlined in this Agreement. Any Protected Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to Contractor, for the purpose of performing its obligations under this Agreement. Protected Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Protected Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement.

Contractor may use de-identified Protected Information for product development, research, or other internal purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Contractor agrees not to attempt to re-identify de-identified Data.

Contractor is prohibited from mining the Protected Information for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement directed towards children, parents, guardians, or District employees will be strictly prohibited unless allowed with express written consent of the District. Contractor shall not use Protected Information to amass a profile about a pupil, except in furtherance of K-12 school purposes. Operators shall not sell Protected Information to unauthorized third parties.

Contractor will not change how Protected Information is shared under the terms of this Agreement in any way without advance notice to the School District.

VIII. DATA BREACHES:

Contractor shall notify the School District in writing as soon as commercially practicable, however no later than seven (7) days, after Contractor has either actual or constructive knowledge of a breach which affects the School District's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. Contractor shall have actual or constructive knowledge of an Incident if Contractor actually knows there has been an Incident or if Contractor has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. Contractor shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. Contractor shall promptly take appropriate action to mitigate such risk or potential problem at Contractor's expense; provided that the Incident was not attributable to School District. In the event of an Incident, Contractor shall, at its sole cost and expense, restore the Confidential Information, to as close its original state as practical, including, without limitation any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable; provided that the Incident was not attributable to School District.

Contractor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Contractor will also have a written incident response plan, to include prompt notification of the District in the event of a security or privacy incident, as well as best practices for responding to a breach of PII.

XII. TERMINATION PRIOR TO EXPIRATION OF CONTRACT TERM:

This Agreement may be terminated at any time prior to expiration of the contract term by mutual agreement of the parties in writing. This Agreement may be terminated unilaterally by either party for cause or noncompliance with the terms, conditions, and requirements set forth herein, provided, however, that the noncompliant party shall first be entitled to a written demand for compliance and a reasonable opportunity to cure any noncompliance therein identified. Failure to cure any identified noncompliance within 20 days of receipt of written demand shall constitute a material breach of this Agreement, and shall entitle the non-breaching party to immediately terminate this Agreement.

XIII. MODIFICATION, AND WAIVER:

No alteration or modification of this Agreement shall be valid unless evidenced by a writing signed by the parties to this Agreement. A waiver of any term or condition of this Agreement or breach of this agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of this Agreement. Any waiver must be in writing each time a waiver occurs.

XIV. SAVINGS CLAUSE:

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XV. NOTICES:

All notices, consents, request, instructions approvals or other communications provided for herein shall be in writing and delivered by both email and personal delivery or regular U.S. mail, return receipt requested, to the last known address of the party being provided such notice.

party. The parties acknowledge that, as a public entity in the State of Montana, the School District and entities contracting with the School District must comply with the open records laws of the State.

I have read this Agreement, understand its terms, and agree to be bound thereby. DATED this 3rd day of November, 2020.

Mary E. Oemig

Mary Oemig, President

Date: 11/3/2020

Omega Labs Inc., Contractor

9805 NE 116th ST NE #7198

Kirkland WA 98034

+18339692666

<https://wow.boomlearning.com>

Date: 11/3/20 November 3, 2020, Board Chair Tim Sather

School District

ATTEST:

[Signature]

Date: November 3, 2020 [Signature], District

X Clerk [Signature] School District