

MEMORANDUM OF UNDERSTANDING

BETWEEN THE SCHOOL BOARD OF CLAY COUNTY AND CLEVER, INC.

FOR TRANSMITTING STUDENT DATA TO SCHOOL BOARD OF CLAY COUNTY VENDORS

PARTIES

1. The School Board of Clay County, Florida ("SBCC") is a public school Board organized and existing under and pursuant to the constitution and laws of the State of Florida and with a primary business address at 900 Walnut Street, Green Cove Springs FL 32043.
2. Clever, Inc. ("Clever") has a primary business address at 140 2nd Street, Fourth Floor, San Francisco CA 94105.

PURPOSE

3. Clever shall receive electronic data from the SBCC containing student, teacher, and other information. SBCC may designate third parties who are authorized to securely access the SBCC's information via the Clever Application Programming Interface. Transferring data through Clever allows the SBCC to minimize time spent on data transfers, which would otherwise require the creation of separate record layouts for each vendor. There is no cost to the SBCC to use Clever.

DUTIES

4. The SBCC shall perform the following duties:
 - a. Provide Clever with information security specifications required to transmit pupil record and other information electronically.
 - b. Provide data for the purposes of this Agreement in compliance with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. section 1232g and 34 C.F.R. section 99, and related Florida Education Code provisions.
5. Clever shall perform the duties listed in Attachment A: "Student Record Confidentiality and Redislosure Agreement" which is attached hereto and made a part hereof. In addition, Clever shall:
 - a. Comply with all FERPA and Florida Education Provisions, including the following:
 - i. Use the data shared under this agreement for no purpose other than the work stated in this MOU and authorized under Section 99.31(a)(6) of Title 34 of the code of Federal Regulations. Clever further agrees not to share data received under this MOU with any entity not authorized by the SBCC.
 - ii. Require all Clever employees and agents of any kind to comply with all applicable provisions of FERPA and other federal and Florida laws with respect to the data shared under this agreement. Clever agrees to require and maintain an appropriate confidentiality agreement from each Clever employee or agent with access to data pursuant to this agreement (Attachment A, Student Record Confidentiality and Redislosure Agreement).

- iii. Maintain all data obtained pursuant to this agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of this agreement. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from Clever to any other institution or entity.
- iv. Clever shall comply with the SBCC's information security specifications prior to receiving any electronic transfers of pupil record information. SBCC may require Clever to provide documentation of compliance prior to any transmittal.

DATA REQUEST

6. Clever shall be provided with personally identifiable pupil record and other information, as designated in Attachment B: Data Fields
7. Clever agrees that the SBCC makes no warranty concerning the accuracy of the student data and other information provided.

TERM

8. The agreement shall be effective for five (5) years from the date the last party signs (the "Initial Term") Upon expiration of the Initial Term, the Agreement shall automatically renew for one (1) year terms unless terminated as provided herein. Either party may terminate this agreement for any reason at any time upon reasonable notice to the other party. Within 72 hours of receipt of notice of termination, Clever shall cease accessing the SBCC's SIS and destroy any stored student information.

GENERAL PROVISIONS

9. **INDEPENDENT CONTRACTOR.** While engaged in performance of this agreement, Clever is an independent contractor and is not an officer, agent, or employee of the SBCC. Clever is not entitled to benefits of any kind to which SBCC's employees are entitled, including but not limited to unemployment compensation, worker' compensation, health insurance and retirement benefits. Clever assumes full responsibility for the acts and/or omissions of Clever's employees or agents as they relate to performance of this agreement. Clever assumes full responsibility for workers' compensation insurance, and payment of all federal, state and local taxes or contributions, including but not limited to unemployment insurance, social security, Medicare and income taxes with respect to Clever and Clever's employees. Clever warrants its compliance with the criteria established by the U.S. Internal Revenue Service (I.R.S.) for qualification as an independent contractor, including but not limited to being hired on a temporary basis, having some discretion in scheduling time to complete contract work, working for more than one employer at a time, and acquiring and maintaining its own office space and equipment.
10. **CONFLICT OF INTEREST.** Clever represents that Clever has no existing financial interest and shall not acquire any such interest, direct or indirect, which could conflict in any manner or degree

with the performance of services required under this agreement and that no person having any such interest shall be subcontracted in connection with this agreement, or employed by Clever. Clever shall not conduct or solicit any non-SBCC business while on SBCC property.

- a. Clever shall also take all necessary steps to avoid the appearance of a conflict of interest, and shall have a duty to disclose to the SBCC prior to entering into this agreement any and all circumstances existing at such time, which pose a potential conflict of interest.
- b. Clever warrants that it has not directly or indirectly offered or given, and shall not directly or indirectly offer or give, to any employee, agent, or representative of SBCC any cash or non-cash gratuity or payment with view toward securing any business from SBCC or influencing such person with respect to the conditions, or performance of any contracts with or orders from SBCC, including without limitation this agreement. Any breach of this warranty shall be a material breach of each and every contract between SBCC and Clever.
- c. Should a conflict of interest issue arise, Clever agrees to fully cooperate in any inquiry and to provide the SBCC with all documents or other information reasonably necessary to enable the SBCC to determine whether or not a conflict of interest existed or exists.
- d. Failure to comply with the provisions of this section shall constitute grounds for immediate termination of this agreement, in addition to whatever other remedies the SBCC may have.

11. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with all work performed under SBCC agreements, there shall be no discrimination against any employee or applicant for employment because of race, color, religious creed, national origin, ancestry, marital status, sex, sexual orientation, age, disability or medical condition and therefore Clever agrees to comply with applicable federal and state laws. In addition, Clever agrees to require like compliance by all subcontractors employed on the work.

12. **GOVERNING LAW.** The validity, interpretation and performance of this agreement shall be determined according to the laws of the State of Florida. All claims arising out of or relating to this agreement shall be handled exclusively in the federal or state courts of Clay County, Florida and SBCC and Clever consent to venue and personal jurisdiction in those courts.

13. **INSURANCE.** Clever shall, at its sole cost and expense, maintain in full force and effect, during the term of this Agreement, the following insurance coverage:

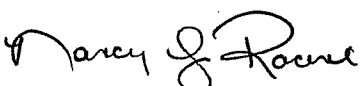
- a. Commercial General Liability Insurance with limits as follows:
 - i. \$1,000,000 per occurrence
 - ii. \$1,000,000 personal & advertising injury
 - iii. \$2,000,000 general aggregate
- b. Clever, upon request, shall furnish the SBCC with certificates of insurance evidencing such coverage.

14. **NOTICES.** All notices required or permitted by this Agreement shall be in writing and shall be either

personally delivered or sent by nationally-recognized overnight courier, facsimile or by registered or certified U.S. mail, postage prepaid, addressed as set forth below (except that a party may from time to time give notice changing the address for this purpose). A notice shall be effective on the date personally delivered, on the date delivered by a nationally-recognized overnight courier, on the date set forth on the receipt of a telecopy or facsimile, or upon the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

IN WITNESS WHEREOF, the parties have executed this Agreement as the last day noted below.

School Board of Clay County, Florida

By: 


Name: Nancy G. Racine

Title / Position: Director of Purchasing

Address: 814 Walnut Street, Green Cove Springs, FL 32043

Date: 3/3/2014

CLEVER, INC.

By: 

Name: Aaron Sokol

Title / Position: District Partnerships Director, Clever

Address: 140 2nd Street, San Francisco, CA 94105

Date: 3/3/2014

ATTACHMENT A
STUDENT RECORD CONFIDENTIALITY AND RE-DISCLOSURE AGREEMENT

School Board of Clay County, Florida ("SBCC"), and Clever Inc. ("Clever") have entered or are planning to enter into an agreement or other arrangement that may involve Clever's receipt of or access to certain student records and information concerning SBCC students. The parties are entering into this Student Record Confidentiality and Re-Disclosure Agreement ("Agreement") in order to ensure proper treatment of any student record information that Clever obtains or learns.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- a. "Student Record Information" means any item of information (in any format, written, electronic, or other) that is directly related to an identifiable SBCC pupil (current or former) and is maintained by the SBCC or by a SBCC employee in the performance of his or her duties.

2. STUDENT RECORD INFORMATION. Clever shall only disclose Student Record Information in accordance with the terms of this Agreement and shall make no other disclosure of Student Record Information at any time.

- a. Clever shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all data, including electronically-maintained or transmitted data received from, or on behalf of the SBCC. These measures shall be extended by contract to all subcontractors used by Clever.
- b. Clever and its employees, subcontractors and agents involved in the handling, transmittal, and/or processing of data provided under this MOU shall be required to maintain the confidentiality of all student and staff-related personally identifiable information.
- c. Clever shall maintain procedures and systems that shall require the use of secured passwords to access computer databases used to process, store, or transmit data provided under this MOU.
- d. Procedures and systems, such as good practices for assigning passwords, shall be developed and implemented to maintain the integrity of the systems used to secure computer databases used to process, store, or transmit data provided under this MOU.
- e. Procedures and systems that ensure that all confidential student and staff data processed, stored, and/or transmitted under the provisions of this MOU shall be maintained in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.
- f. The procedures and systems developed and implemented to process, store, or transmit data provided under this MOU shall ensure that any and all disclosures of confidential

student and staff data comply with all provisions of federal and Florida state laws relating to the privacy rights of students and staff as such laws are applicable to the parties to this MOU.

3. RE-DISCLOSURE.

- a. CONSENT REQUIRED. Clever shall only disclose Student Record Information to its employees having a need to know in connection with their Project responsibilities, and shall not disclose any Student Record Information to any third party without first obtaining written consent to the disclosure from each Consenting Party for whom Student Record Information shall be disclosed. Clever shall promptly provide the SBCC with copies of any and all written consents that the Clever obtains under this paragraph.
- b. ACCESS LOG AND RECORD FILES. Clever shall maintain an access log that records all disclosures of (or access to) Student Record Information. Entries in the access log shall identify the person(s) receiving access, the reason access was granted, the date, time and circumstances of disclosure, and all Student Record Information provided. The access log shall be made available to the SBCC promptly upon request.

4. REQUIRED DISCLOSURE. In the event that Clever is requested or required by subpoena or other court order to disclose any Student Record Information, Clever shall provide immediate notice of the request to the SBCC and shall use reasonable efforts to resist disclosure until an appropriate protective order may be sought, or a waiver of compliance with the provisions of this Agreement granted. If, in the absence of a protective order or the receipt of a written waiver hereunder, Clever is nonetheless, in the written opinion of its legal counsel, legally required to disclose Student Record Information, then Clever may disclose that Student Record Information without liability hereunder, provided that the SBCC has been given a reasonable opportunity to review the text of the disclosure before it is made and that the disclosure is limited to only Student Record Information specifically required to be disclosed.

5. SAFEGUARDS.

- a. Clever shall provide SBCC with the name and contact information for a primary and alternate employee of Clever who shall serve as SBCC's primary security contact and who shall be available to assist SBCC twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Student Record Information related Security Breach. The designated contact shall respond to any SBCC inquiries within two (2) hours.
- b. In the event that an unauthorized disclosure of Student Record Information, unauthorized access to Student Record Information, or other incident that threatens the security of Student Record Information comes to the attention of Clever, Clever shall immediately notify the SBCC.
- c. Without limiting Clever's obligations under this Contract to keep Student Record Information safe and confidential, Clever shall implement administrative, physical, and technical infrastructure and procedural safeguards to protect and maintain the integrity of Student Record Information that Clever receives, maintains, or transmits on behalf of SBCC. Such safeguards shall be no less rigorous than accepted industry

practices, including specifically the International Organization for Standardization's standards ISO/IEC 27001:2005 (Information Security Management Systems-Requirements), ISO-IEC 27002:2005 (Code of Practice for International Security Management). Clever shall ensure that the manner in which Student Record Information is collected, accessed, used, stored, processed, disposed of, and disclosed complies with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

- d. The SBCC's Student Record Information shall be stored, backed up and served only on servers located inside the continental United States.
- e. Clever shall assure that all data is transmitted from SBCC's access points to the ultimate server and shall be stored internally by Clever using SBCC approved encryption of no less rigor than NIST-validated DES standards.
- f. **ADDITIONAL SAFEGUARDS.** Clever agrees to provide the following additional safeguards:
 - i. Include component and system level fault tolerance and redundancy in system design.
 - ii. Inactivity time-out feature that logs users off the system who have been inactive or exceeded a maximum number of login attempts.
 - iii. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
 - iv. Authentication of users at login with a 256-bit or higher encryption algorithm.
 - v. Secure transmission of login credentials.
 - vi. Automatic password change routine.
 - vii. Provide audit trails and reports of user activity and source IP address.
 - viii. Secure (encrypt) the audit trails and system generated logs, and ensure that they are stored in locations that are inaccessible to automated content discovery software.
 - ix. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with SBCC systems is not degraded or compromised.
 - x. Employ an in-line Intrusion Protection System that inspects incoming data transmissions.
 - xi. Support system security measures testing and verification before receiving or transmitting Student Record Information.
 - xii. Provide upon request a documented Disaster Recovery Plan that includes the following elements:
 - 1. Available recovery times.
 - 2. Conduct 24x7 system monitoring that is capable of detecting potential outages.
 - 3. Plans for File-level, Database and server recovery after a component/system failure, damage, or compromise.
 - 4. Substantial geographical separation between data centers hosting production, backup and redundant system elements.
 - 5. Include recovery/mitigation procedures for all managed sites, including subcontractors and agents.
 - 6. Include provisions for at least the following events: fire, natural

disaster, sabotage, accidental human error, flooding, equipment failure, application/database failure

7. Prevent hostile or unauthorized intrusion.
 8. Security screening of employees with access to Student Record Information. Screening is to be conducted by a commercial background screening company, the name of which is to be provided to SBCC upon request.
 9. Backup all Student Record Information at least once every 24 hours.
 10. Perform content snapshots at least daily and retain for at least 90 days.
6. MITIGATION. Clever shall mitigate, to the extent practicable, any actual or potential harmful effect that is known to Clever of a use or disclosure of Student Record Information by Clever in violation of the requirements of this Contract.

7. NOTICE OF SECURITY INCIDENT.

- a. Clever shall report to SBCC any: (1) unauthorized access, use, disclosure, modification, or destruction of Student Record Information that becomes known to Clever; or (2) interference with Clever's information systems operations, of which Clever becomes aware. Clever shall notify SBCC of any use or disclosure of Student Record Information by Clever not permitted by this Contract, any security incident involving Student Record Information, and any breach or loss of Student Record Information, within twenty-four (24) hours.
- b. Immediately following Clever's notification to BCC of a security incident, breach, or loss of Student Record Information, the parties shall coordinate with each other to investigate the matter. Clever shall cooperate in investigating the matter and in meeting SBCC's notification obligations under any applicable notification laws. Clever agrees to fully cooperate with SBCC in SBCC's handling of the matter, including, without limitation:
 - i. Assisting with any investigation;
 - ii. Facilitating interviews with Clever's employees and others involved in the matter; and
 - iii. Making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards or as otherwise required by SBCC.
 - iv. Providing the tools and procedures necessary to recapture stored Student Record Information in the event of the loss of such information from the Clever's storage medium.
- c. Clever shall provide the following information to SBCC within five (5) business days of discovery of a security incident, breach, or loss of Student Record Information except when, despite all reasonable efforts by Clever to obtain the information required, circumstances beyond the control of the Clever necessitate additional time. Under such circumstances, Clever shall notify SBCC, before the five (5) business days have elapsed, of the necessity for additional time, And shall provide to SBCC the following information as soon as possible and without unreasonable delay, but in no event later than fifteen (15) calendar days from the date of discovery of a security incident, breach, or loss of Student Record Information:

- i. The date of the security incident, breach, or loss of Student Record Information;
 - ii. The date of the discovery of the security incident, breach, or loss of Student Record Information;
 - iii. A description of the types of Student Record Information that were involved;
 - iv. Identification of each individual whose Student Record Information has been, or is reasonably believed to have been, accessed, acquired, lost, modified, or disclosed; and
 - v. Any other details necessary to complete an assessment of the risk of harm to each individual identified in this Contract.
- d. Clever agrees to establish procedures to investigate the security incident, breach, or loss of Student Record Information, to mitigate losses, and to install/implement such safeguards as are needed to protect against any future security incident, breach, or loss of Student Record Information, Clever agrees to provide a description of these procedures and the specific findings of the investigation to SBCC in the time and manner reasonably requested by SBCC.

8. COMPLIANCE OF AGENTS.

- a. The SBCC may designate third parties who are authorized to securely access its Student Record Information in Clever's possession/custody, Clever shall not disclose any Student Record Information to any third party unless Clever has received prior written approval by SBCC or such disclosure is required by law.
 - b. SBCC may, at any time, revoke any third party's access to Student Record Information by providing written notice to the third party or Clever.
 - c. For all employees or subcontractors who have access to Student Record Information, during the term of each subcontractor or employee's employment by Clever, Clever shall at all times cause such subcontractor or employee to abide strictly by Clever's obligations under this Contract. Clever further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of Student Record Information by any of Clever's officers, partners, principals, employees, or agents.
9. NO LICENSE. No licenses or other rights under patent, copyright, trademark, trade secret or other intellectual property laws are granted or implied by this Agreement. The SBCC is not and shall not be obligated under this Agreement to purchase from or provide to Clever any information, service, or product.
10. DISCLAIMER. The Student Record Information is provided AS IS and without warranty of any kind, whether expressed or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose or title. The SBCC shall not have any liability or responsibility for errors or omissions in, or any decisions made by Clever in reliance upon any Student Record Information.

11. REMEDIES.

- a. **INJUNCTIVE RELIEF.** The parties agree that Student Record Information is of a special character, such that money damages would not be sufficient to avoid or compensate the SBCC, its employees, agents and students for any unauthorized use or disclosure thereof, and that injunctive and other equitable relief would be appropriate to prevent any actual or threatened unauthorized use or disclosure. This remedy may be pursued in addition to any other remedies available at law or in equity, and Clever agrees to waive any requirement for the securing or posting of any bond. In the event of litigation to enforce any provision hereof, the prevailing party shall be entitled to recover all costs, including its reasonable attorneys fees and costs, incurred in connection with the litigation.
 - a. **FIVE-YEAR BAR.** If the SBCC determines, or is made aware of a determination by any other governmental agency, that Clever has disclosed any Student Record Information in violation of this Agreement, or has maintained any Student Record Information in violation of this Agreement, then without prejudice to any other rights or remedies the SBCC may have, the SBCC shall be entitled to prohibit Clever from accessing any Student Record Information for a period of five (5) years or more, as determined by the SBCC in its sole discretion.
12. **REQUIRED NOTICE.** Clever shall notify the SBCC immediately upon discovery of any unauthorized use or disclosure of Student Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered by hand, sent by courier or other express mail service, postage prepaid, or transmitted by facsimile, addressed to a party at the address set out by its signature below.
13. **WAIVER.** No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.
14. **SEVERABILITY.** If any provision of this Agreement is determined by any court to be invalid or unenforceable, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.
15. **ENTIRE AGREEMENT.** This Agreement constitutes the parties' entire agreement with respect to the subject matter hereof and supersedes any and all prior statements or agreements, both written and oral. This agreement may not be amended except by a written amendment signed by the parties.

**ATTACHMENT B
DATA FIELDS**

The data elements covered under this agreement are:

1. SCHOOLS.

School ID, School Name, State ID, NCES ID, School Address, School City, School State, School Zip, School Phone, Low Grade, High Grade, Principal, Principal Email.

2. STUDENTS

School ID, Student ID, Student Number, State ID, Last Name, Middle Name, First Name, Gender, DOB, Grade, Race (optional), Hispanic/Latino (optional), ELL Status (optional), FRL Status (optional), IEP Status (optional), Student Zip (optional), Student Email, Contact Name (optional), Contact Type (optional), Contact Phone (optional), Contact Email (optional), Student Username (optional), Student Password (optional).

3. TEACHERS

School ID, Teacher ID, Teacher Number, State Teacher ID, Last Name, Middle Name, First Name, Teacher Email, Title, Teacher Username (optional), Teacher Password (optional).

4. SECTIONS:

School ID, Section ID, Teacher ID, Section Name, Section Grade, Course Name, Course Number, Period, Subject, Term Name, Term Start, Term End.