

Agreement

This Agreement is made as of ____ day of _____, 2018 (the "Effective Date"), by and between Clever, Inc. ("Clever") located at 1263 Mission Street, San Francisco, CA 94103 and The School Board of Broward County, Florida, a political subdivision of the State of Florida, located at 600 SE Third Avenue, Fort Lauderdale, FL 33301 ("SBBC").

By agreeing to these Terms, SBBC authorizes Clever to access SBBC Information or receive data from SBBC for the purpose of allowing Clever or authorized third parties to provide SBBC software integration. Student Information includes "education records" as defined in the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C. § 1232g.

TERM OF AGREEMENT

Clever shall commence performance of the Agreement upon approval of the Board. SBBC reserves the right to terminate this Agreement with or without cause by giving thirty (30) days written notice to the Clever.

ACCESS

SBBC will provide data to Clever for the purposes of providing software integration, an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1).

Clever is considered a "school official" with a legitimate educational interest to receive education records for the purposes of carrying out its responsibilities under this agreement. Clever may only re-disclose to third parties limited SBBC data from education records, that which is necessary for those third parties to complete their contracted responsibilities. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond the terms of this agreement.

SBBC data includes, but is not limited to:

1. **School level data** such as local identification number, name, state and federal identifier, address, telephone number, and the lowest and highest grade at the school, and principal's name and e-mail address.
2. The **Student data** (from education records) provided will include, but is not limited to, school of enrollment, local and state identifier number, student identification number, full name, gender, date of birth, grade, race, ethnicity, language status, lunch status, special education status, zip code, e-mail address, username, password, and parent or guardian contact name, type, telephone number, and e-mail address.
3. The **Teacher data** (employment records) provided will include, but is not limited to, school of employment identification number, teacher identification number, local staff and state teach identifier, full name, e-mail, title or role, username, and password.
4. **Additional data** provided will include, but is not limited to, unique name for section, grade level, course name, course number, bell schedule information, subject name, and the term associated with the section.

THIRD PARTY ACCESS

SBBC may designate third parties who are authorized to securely access its SBBC data via the Clever Application Programming Interface (the "API"). Clever shall not disclose SBBC data to third parties unless explicitly authorized by SBBC in writing. SBBC may, at any time, revoke any third party's access to SBBC information by providing written notice to Clever.

Clever's subcontractors (if any) obtaining confidential information are bound by this agreement and responsible for non-redisclosure under FERPA.

CONFIDENTIALITY AND SECURITY

a. Both parties understand and agree that they are subject to all federal and state laws and SBBC Policies that are provided to Clever relating to the confidentiality of student information. Both parties further agree to comply with the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99 et. seq. Clever shall regard all student information as confidential and will not disclose the student information to any third party without prior written approval by SBBC.

b. Both parties shall not disclose any confidential information except as required by Chapter 119, Florida Statutes or other applicable law.

c. All written information submitted by SBBC to Clever in connection with these Services or which is stored on the Site is deemed confidential.

d. Data Privacy. Confidential information will be kept secured, the identity of all persons having access to the confidential information will be documented and access will be logged. In the event of a breach of confidentiality, the breaching party will immediately notify the non-breaching party.

e. Clever represents and warrants that its collection, access, use, storage, disposal and disclosure of SBBC or user information does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.

f. Without limiting Clever's obligations under this Agreement to keep SBBC data safe and confidential, Clever shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices including utilizing Amazon Web Services or an equivalent Tier 4 datacenter that comply with the International Organization for Standardization's standards ISO/IEC 27001:2005 - Information Security Management Systems - Requirements and ISO-IEC 27002:2005 - Code of Practice for International Security Management, and shall ensure that all such safeguards, including the manner in which SBBC information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

g. For all employees or subcontractors who have access to SBBC data, 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 Agreement. Clever further agrees that it shall maintain a disciplinary process to address any unauthorized access, use, or disclosure of Personal Information by any of Clever's officers, partners, principals, employees, agents or Clever's.

h. At any time during the term of this Agreement at SBBC's written request or upon the termination or expiration of this Agreement for any reason, Clever shall, and shall instruct all Authorized Persons to, promptly return to SBBC all copies, whether in written, electronic or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to SBBC that such Personal Information has been returned to SBBC or disposed of securely. Clever shall comply with all directions provided by SBBC with respect to the return or disposal of Personal Information. Data will be securely erased from any media once that media is no longer in use by termination of this Agreement or by disuse of equipment. All equipment which contains or has contained SBBC data must be securely erased prior to disposal. Secure erasure will be deemed the deletion of the data using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

i. Clever will assure that all data is transmitted from SBBC's access points to the ultimate server and will be stored internally by Clever or its subcontractors using SBBC approved encryption of no less rigor than NIST validated-DES standards.

j. Security Breach

(a) Clever shall:

(i) Provide SBBC with the name and contact information for an employee(s) of Clever who shall serve as SBBC's primary security contact and shall be available to assist SBBC twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach; and

(ii) Notify SBBC of a Security Breach as soon as practicable, but no later than twenty-four (24) hours after Clever becomes aware of it; and

(iii) Notify SBBC of any Security Breaches by telephoning SBBC at 754-321-0300 (Manager, Information Security) and 754-321-1900 (Privacy Officer), and by e-mailing SBBC with a read receipt to privacy@browardschools.com, with an email copy to Clever's primary business contact within SBBC.

(b) Immediately following Clever's notification to SBBC of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Clever agrees to fully cooperate with SBBC in the handling of the matter, including, without limitation:

(i) Assisting with any investigation; and

(ii) Facilitating interviews with Clever's employees and other 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 [reasonably] required by School Board; and

(iv) Preparing and distributing, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

(v) Clever shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this

section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or obligations existing under this Agreement; and

(vi) The terms and conditions provided herein shall apply to any and all previous confidential information provided to Clever prior to execution of this Agreement; and (vii) SBBC agrees that Clever may collect and use data derived from SBBC's data that has been anonymized, aggregated, or otherwise de-identified such that the data cannot identify a particular student, user, or school. Clever may use such aggregate and anonymous data to operate, analyze, improve or market Clever's products and services.

k. Right to Audit

(a) Clever shall:

(i) Provide access and all necessary documents required to conduct an independent assessment certifying Clever's compliance with applicable laws and regulations; and

(ii) Provide access to audit and ensure all security and privacy controls are in place.

STORAGE AND BACKUPS

During the term of this Agreement, Clever will use Amazon Web Services or an equivalent Tier 4 datacenter located and governed by the laws of the United States. SBBC data shall be stored, backed up and access on secured servers located within the United States subject to local, state and federal law. SBBC requires notification, in writing, if the hosting location changes.

TERMINATION

SBBC reserves the right to terminate this Agreement at any time and for any reason upon giving thirty (30) days' notice to Clever. If said Agreement should be terminated for convenience as provided herein, SBBC will be relieved of all obligations under said contract. Immediately upon receipt of notice of termination, Clever shall cease accessing the SBBC's data, immediately remove all third-party access through API and return all data to SBBC. EXPORT CONTROL: Clever shall not export directly or indirectly any technical data, information or items acquired under this Agreement to any country for which the U.S. Government (or any School Board thereof) required an export license or other approval without first obtaining such license or approval.

MODIFICATIONS

This Agreement may only be modified, or any rights under it waived, by a written agreement executed by both parties.

BOARD POLICIES

To the extent applicable, Clever certifies agreement with the following School Board Policies: 5306 School and District Technology Usage 3320 Purchasing Policies; 5100.1 Student Records: Confidentiality and Family Education Rights, Student Code of Conduct (privacy issues) and agree to comply with all applicable School Board contracting and procurement policies and procedures.

NOTICE

It is understood and agreed between the Parties that written notice shall be mailed or delivered to the addresses set forth below and shall constitute sufficient written notice. The Parties designate the following:

For Clever, Inc:
Tyler Bosmeny
1263 Mission Street
San Francisco, CA 94103

For SBBC:
Superintendent of Schools
600 SE Third Avenue
Fort Lauderdale, Florida 33301

With a copy to:
Chief Information Officer
600 SE Third Avenue
Fort Lauderdale, Florida 33301

DISCLAIMER OF WARRANTIES

THE SERVICES, AND ALL MATERIALS, INFORMATION, AND SERVICES INCLUDED IN THE CLEVER SITE ARE PROVIDED ON AN "AS IS" BASIS. CLEVER INC. AND ITS LICENSORS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. CLEVER AND ITS LICENSORS RELIABILITY, TIMELINESS, OF THE SERVICES. CLEVER INC. AND ITS LICENSORS DISCLAIM ANY WARRANTIES FOR SERVICES OR GOODS RECEIVED THROUGH OR ADVERTISED ON THE CLEVER INC. SERVICES OR RECEIVED THROUGH ANY LINKS PROVIDED BY THE CLEVER SITE.

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INSURANCE REQUIREMENTS

Clever shall comply with the following insurance requirements throughout the term of this Agreement.

- (a) General Liability. Limits not less than \$1,000,000 per occurrence for Bodily Injury/ Property Damage; \$1,000,000 General Aggregate. Limits not less than \$1,000,000 for Products/Completed Operations Aggregate.
- (b) Professional Liability/Technical Errors & Omissions. Limit not less than \$1,000,000 per occurrence covering services provided under this Agreement.
- (c) Acceptability of Insurance Carriers. The insurance policies shall be issued by companies qualified to do business in the State of Florida. The insurance companies must be rated at least A- VI by AM Best or Aa3 by Moody's Investor Service.
- (d) Verification of Coverage. Proof of Insurance must be furnished within 15 days of execution of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Works to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC before any work commences to permit Insert Name time to remedy any deficiencies. Please verify your account information and provide contact details for your company's Insurance Agent via the link provided in the email upon award.
- (e) Required Conditions. Liability policies must contain the following provisions. In addition, the following wording must be included on the Certificate of Insurance:

1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured;
2. General liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida; and
3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P. O. Box 4668-ECM, New York, New York 10163-4668.

(f) Cancellation of Insurance. Clever is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two business days if required insurance is cancelled.

HOLD HARMLESS

Clever shall hold harmless, indemnify and defend the indemnitees (as hereinafter defined) against any claim, action, loss, damage, injury, liability, cost or expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court costs arising out of bodily injury to persons including death, or damage to tangible property arising out of or incidental to the performance of this contract (including goods and services provided thereto) by or on behalf of the Clever, whether or not due to or

caused in part by the negligence or other culpability of the indemnitee. The following shall be deemed to be indemnitees: The School Board of Broward County, Florida and its members, officers and employees.

INDEMNIFICATION

To the fullest extent permitted by law, Clever shall indemnify and hold harmless the Board, and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs and attorneys' fees at the pre-trial, trial and appellate levels, arising out of, resulting from or incidental to Clever's performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of Clever or other persons employed or utilized by Clever in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. This indemnification obligation shall not be diminished or limited in any way to any insurance maintained pursuant to the Agreement otherwise available to the Clever. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. The provisions of this Section shall specifically survive the termination of this Agreement. The provisions of this Section are intended to require the Clever to furnish the greatest amount of indemnification allowed under Florida law. To the extent any indemnification requirement contained in this Agreement is deemed to be in violation of any law, that provision shall be deemed modified so that the Clever shall be required to furnish the greatest level of indemnification to the Indemnitees as was intended by the parties hereto.

Limitation of Liability

To the maximum extent permitted by applicable law, in no event shall Clever, its affiliates, agents, directors, or employees: (a) be liable for any indirect, punitive, incidental, special, consequential or exemplary damages hereunder, and (b) be liable for any amount in excess of: (i) the amount SBBC has paid to Clever hereunder or \$10,000; whichever is greater, or (ii) \$1,000,000.00 for any damages, fees or costs related to Clever's indemnification obligations herein. This section shall survive the termination of this Agreement.

PUBLIC RECORDS

The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. Clever shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, Clever shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Clever shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if Clever does not transfer the public records to SBBC. Upon completion of the Agreement, Clever shall transfer, at no cost, to SBBC all public records in possession of Clever or keep and maintain public records required by SBBC to perform the services required under the Agreement. If Clever transfers all public records to SBBC upon completion of the Agreement, Clever shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Clever keeps and maintains

public records upon completion of the Agreement, Clever shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

DUTY TO DEFEND

Clever agrees, at its own expense, and upon written request by SBBC, to defend any suit, action or demand brought against SBBC on any claim or demand arising out of, resulting from or incidental to Clever's performance under this Agreement.

ABOUT THESE TERMS

These Terms control the relationship between Clever and SBBC. They do not create any third party beneficiary rights. If SBBC does not comply with these Terms, and Clever does not take action right away, this does not mean that Clever is giving up any rights that Clever may have, such as taking action in the future.

If a provision in these Terms is found unenforceable, the remaining provisions of these Terms will remain in full effect and an enforceable term will be substituted reflecting the original intent as closely as possible.

This Agreement shall be deemed to have been made in the State of Florida, and shall be governed by and construed in accordance with the laws of the State of Florida. Any dispute with respect to this Agreement is subject to the laws of Florida, venue Broward County, Florida. Each party is responsible for their own attorney fees.

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FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____

Nora Rupert, Chair

ATTEST:

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

FOR CLEVER

(Corporate Seal)

Clever, Inc.

ATTEST:

Rafael Garcia

RAFAEL GARCIA, Secretary

-or-

By

[Signature]

Chief Executive Officer

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

The foregoing instrument was acknowledged before me this 26th day of MARCH, 2018 by TYLER W. BOSMENY of

Name of Person

Clever, Inc., on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced CA DRIVER'S LICENSE as identification and did/did not first take an oath. Type of Identification

My Commission Expires: 12/23/2021

[Signature]

Signature - Notary Public



OU D SAPPRASERT O'BRIEN
Printed Name of Notary

2223474
Notary's Commission No.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of SAN FRANCISCO)

On MARCH 26, 2018 before me, OUD SAPPRASERT O'BRIEN, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared TYLER W. BOSMENT
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Oud Sapprasert O'Brien
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document:
Document Date: Number of Pages:
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing:

Signer's Name:
Corporate Officer - Title(s):
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian or Conservator
Other:
Signer Is Representing: