

Master License and Service Agreement

This Master License and Service Agreement (“Agreement” or “MLSA”) is made and entered into by and between Clever Inc. (“Vendor”), having its principal offices at 1263 Mission Street, San Francisco, CA 94103, and the **Board of Cooperative Educational Services for the First Supervisory District, Erie County** (“Customer”), having its principal offices at 355 Harlem Road, West Seneca, NY 14224. Vendor and Customer are sometimes referred to herein, individually, as a “Party,” and collectively, as the “Parties.” This MSA supplements the Clever General Terms of Use (including the Privacy Policy and Additional Terms of Use for Schools referenced therein) found at <https://clever.com/trust/terms> (collectively, the “Terms”). Vendor on the one hand, and Customer on the other hand, shall be bound by The Terms, which are incorporated by reference herein and shall govern Customer’s access to, and Vendor’s provision of, the Products (as defined below). The terms of this MSA shall supplement the Terms and in the event of a direct conflict between the provisions of this MSA and the provisions of the Terms, the provisions of this MSA shall govern with respect to such conflict.

Boards of Cooperative Educational Services (“BOCES”), including Customer, are municipal corporations organized and existing under Section 1950 of the New York Education Law, and are authorized to provide cooperative educational services to school districts in New York State pursuant to cooperative educational service agreements (“CoSers”) approved by the New York State Education Department.

Regional Information Centers (“RICs”), organized and administratively aligned under a BOCES, provide shared technology and other educational support services on a regional basis to its BOCES’ component school districts, and to other BOCES and school districts located within the RIC’s respective region.

Cooperative educational services provided by a BOCES (by the BOCES itself, or if applicable, its respective RIC) include shared computer services, software, and technical training and support that are provided to school districts that enter into applicable CoSers.

Customer is authorized to issue requests for proposals, award and enter into contracts for the purchase of administrative software applications that can be made available to school districts as part of applicable approved CoSers, on behalf of itself and other BOCES across New York State that participate in a statewide Regional Information Center Contract Consortium (“NYSRIC”). Through Customer’s procurement process, Clever Inc. has been identified and accepted by Customer as a provider of a technology system that is integrated into Customer’s district-student information system and identity system to create easy and secure data transportation for rostering and provisioning of student accounts for partner applications, upon the request of a teacher, principal or district administrator, and to provide other related services, all as more fully described herein and in the Terms (the “Product(s)").

As Customer and several other BOCES throughout New York State have expressed an interest in offering the Product(s) to school districts as part of the applicable approved CoSers, Customer wishes to make the Product(s) available through the NYSRIC. Accordingly, the Parties



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have entered into this Agreement to set forth the terms upon which the Product(s) will be made available by Customer to itself and to other BOCES and school districts through the NYSRIC.

1. TERM and TERMINATION

1.1 Term of Agreement. The Effective Date of this Agreement shall be July 1, 2020. The initial term of this Agreement shall commence on the Effective Date and continue until 11:59 pm June 30, 2023 ("the Initial Term"), unless earlier terminated as otherwise set forth herein. The Initial Term may be extended for successive renewal terms of three (3) years (each a "Renewal Term") only by mutual execution by the Parties of either a written Amendment to this Agreement, or, a new Agreement.

1.2 Termination of Agreement. Either Party may terminate this Agreement for any reason prior to the expiration of its Initial Term (or the expiration of any Renewal Term) upon ninety (90) days' written notice to the other.

1.3 Termination by Customer. Customer shall have the right to terminate this Agreement at any time prior to the expiration of its Initial Term (or the expiration of any Renewal Term) in the event of Vendor's failure to cure any default or breach of this Agreement within (30) days written notice from Customer.

2. SCOPE OF SERVICES

Acting as an independent contractor, Vendor will provide the Product(s) as more fully described in the Terms.

3. GRANT OF LICENSE

3.1 The Product(s) are provided under license pursuant to the terms and conditions set forth in the Terms. Vendor grants to Customer, as a participating BOCES in the NYSRIC on behalf of the Western New York Regional Information Center ("WNYRIC"), and to each other BOCES that is a participant in the NYSRIC (on behalf of its RIC), the right to use the Products as set forth in the Terms. Vendor further grants to each individual school district that contracts for the Product(s) with a BOCES through the NYSRIC by purchasing CoSer 7710 Computer Service: Management and provides professional development under the same CoSer, the right to utilize the Product(s) pursuant to the terms and conditions set forth herein and in the Terms. For purposes of the usage rights granted by Vendor pursuant to this Agreement and the Terms, (i) Customer, each other BOCES, and each individual school district as described herein may also be referred to individually as a "Licensee" and collectively as "Licensees" and (ii) each reference to "you" or a "School" in the Terms shall be deemed to also refer to each Licensee. In addition to any restrictions on use set forth in the Terms, Licensees shall not assign, sublicense or otherwise encumber or transfer the Product(s) without the prior written consent of the Vendor. Nothing herein shall act to transfer any interest in the Product(s) to any Licensee, and title to and ownership of the Product(s) shall at all times remain with the Vendor.

3.2 Vendor may terminate the rights granted to a Licensee under this Agreement and the Terms if the Licensee fails to comply with any terms and conditions of this Agreement or the Terms that are specifically applicable to that entity as a Licensee. Within five (5) days of

receipt of notice of such termination, the Licensee shall return all materials related to the Product(s) and, to the extent applicable, arrange with Vendor to remove the Product(s) from the computers located at the Licensee's sites or under the direct control of Licensee.

3.3 Vendor warrants that it has full power and authority to grant the rights herein described.

4. CONFIDENTIAL INFORMATION

4.1 Confidential Information. Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. "Confidential Information" for purposes of this subparagraph means any information that is marked or otherwise indicated as confidential or proprietary, in the case of written materials, or, in the case of information that is disclosed orally or written materials that are not marked, by notifying the other Party of the proprietary and confidential nature of the information, such notification to be done orally, by email or written correspondence, or via other means of communication as might be appropriate. Notwithstanding the foregoing, (a) Confidential Information of Vendor shall include the Products and the terms of this Agreement (except those portions of the Agreement that Customer may be required to disclose by law or legal process) and (b) the Confidential Information of Customer shall not include Protected Data (as defined in Exhibit A) or any other information provided to Vendor via the Products, which such Protected Data and other information shall instead be governed by Exhibit A and/or the Terms, as applicable. Confidential Information does not include information which (a) was known to the receiving Party or in the public domain before disclosure; (b) becomes part of the public domain after disclosure by a publication or other means except by a breach of this Agreement by the receiving Party; (c) was or is received from a third party under no duty or obligation of confidentiality to the disclosing Party; or (d) was or is independently developed by the receiving Party without reference to Confidential Information. Disclosures of Confidential Information that are required to be disclosed by law or legal process shall not be considered a breach of this Agreement as long as the recipient notifies the disclosing Party, provides it with an opportunity to object and uses reasonable efforts (at the expense of the disclosing Party) to cooperate with the disclosing Party in limiting disclosure to the extent allowed by law.

4.2 Vendor Obligations Under NYS Education Law 2-d. For Student Data, or Teacher and Principal Data, as such terms are defined in New York Education Law Section 2-d, Vendor shall comply with all terms, conditions and obligations as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit A**. In the event that Vendor receives, stores or maintains Student Data, or Teacher and Principal Data provided to it by a Licensee, whether as a cloud provider or otherwise, the Vendor assumes all risks and obligations required to be assumed by Vendor under applicable law in the event of a breach or unauthorized release (as such terms are defined in 8 NYCRR 121) of such data. Vendor shall not subcontract or assign its obligation to store or maintain Student Data, or Teacher and Principal Data, provided to it pursuant to this Agreement to a third-party cloud provider unless granted specific prior written permission from Customer; provided, however, that such permission shall not be required for (i) any third-party cloud provider already being used by Vendor as of the

Effective Date of this Agreement or (ii) a third-party cloud provider that is a U.S.-based publicly traded company in which case Vendor will provide notice of such use to Customer within a reasonable period.

5. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

5.1 Mutual. Each Party represents and warrants that it has the power and authority to enter into this Agreement and that the Party's execution, delivery, and performance of this Agreement (a) have been authorized by all necessary action of the governing body of the Party; (b) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any agreement to which the Party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party, except as otherwise provided herein.

5.2 Intellectual Property. Vendor will indemnify Customer and any other applicable Licensee and hold it or them harmless from and against any and all damages, liabilities and expenses incurred by them as the result of third-party suits, claims actions or proceedings alleging that the use of the Product(s) provided hereunder infringed upon any United States patent or pending application for letters patent or constituted an infringement of any U.S. trademark or copyright (an "Infringement Claim"). Customer or the other Licensee, as applicable, will notify Vendor in writing of such suit, claim, action, proceeding or allegation(s). Vendor shall have sole control of the defense thereof. Customer or the other Licensee, as applicable, shall provide reasonable information and assistance to the Vendor at the Vendor's expense.

5.2.1 Vendor shall have the right to make such defense by counsel of its choosing and Customer or the other Licensee, as applicable, shall cooperate with said counsel and Vendor therein.

5.2.2 If the Product(s) are subject to an Infringement Claim, or in Vendor's opinion is likely to become subject to an Infringement Claim, Vendor shall, in addition to its obligations as set forth in paragraphs 5.2 and 5.2.1 above, at its expense, (a) secure the right for Customer or the other Licensee, as applicable, to continue use of the Product(s), or (b) replace or modify the Product(s) to make it non-infringing or (c) if commercially reasonable efforts to perform the foregoing are unsuccessful, Vendor or Customer may terminate this Agreement and the Terms. This Section 5.2 states Vendor's sole obligation, and Customer's exclusive remedy, for any Infringement Claim.

5.2.3 Vendor shall have no obligation with respect to any such claim of infringement based (i) upon modifications of machines or programming made by Customer or any other Licensee without Vendor's approval, or (ii) upon their combination, operation, or use with apparatus, data, or programs not furnished by Vendor by Customer or any other Licensee, without Vendor's approval or (iii) upon Customer's or any other Licensee's use of the Product(s) in violation of the Terms.

5.5 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE TERMS, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCT(S) AND SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A



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PARTICULAR PURPOSE. VENDOR DOES NOT WARRANT THAT THE PRODUCT(S) WILL PERFORM OR OPERATE UNINTERRUPTED OR ERROR-FREE, OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCT(S) WILL MEET ANY LICENSEE'S PARTICULAR REQUIREMENTS OR PURPOSE.

5.6 Customer Representations and Warranties. Customer hereby represents and warrants to Vendor:

5.6.1 That all BOCES that are participants in the NYSRIC, including Customer, have agreed to be bound by the terms of this Agreement and perform their specific obligations as participating BOCES herein and that Customer will be responsible for compliance with this Agreement by all such BOCES .

5.6.2 That all BOCES that are participants in the NYSRIC, including Customer, will take reasonable measures to ensure that all of the sites used by BOCES and school district Licensees within their jurisdiction will meet the systems and network minimum requirements set forth on **Exhibit B** , attached to this Agreement and made a part hereof.

5.6.3 That all BOCES that are participants in the NYSRIC, including Customer, will take steps to ensure that BOCES and school district Licensees within their jurisdiction use their best efforts to make staff available for training in how to utilize the Product(s) as requested by Vendor.

5.6.4 That all BOCES that are participants in the NYSRIC, including Customer, will provide Vendor with the name of a contact person (hereinafter referred to as the "BOCES Contact") who will have the authority to act on behalf of the BOCES and school district Licensees within their jurisdiction with regards to any questions or issues that may arise with respect to the Product(s). The Vendor will provide written communication to the BOCES Contact if it plans to demo/visit a BOCES or school district Licensee within that BOCES' jurisdiction. This communication will occur a minimum of two (2) days prior to the demo/visit.

6. INDEMNIFICATION AND LIMITATIONS ON LIABILITIES

6.1 Indemnification. Each Party shall indemnify the other Party and that Party's officers, directors, employees, and agents and hold them harmless from any and all liabilities, costs, and expenses, including reasonable attorney fees, incurred by them as the result of third-party suit, claim, action or proceeding arising out of the gross negligence or willfull misconduct attributable to the indemnifying Party or the indemnifying Party's officers, director, employees and agents. The Party seeking indemnification under this Section 6.1 will notify the indemnifying Party in writing of any such suit, claim, action or proceeding and will provide reasonable information and assistance to the indemnifying Party in connection with such suit, claim, action or proceeding, at the Vendor's expense. The indemnifying Party shall have sole control of the defense of any such suit, claim, action or proceeding.

6.2 Limitations on Liabilities. In no event will either Party (nor its affiliates, agents, directors, employees, suppliers or licensors) be liable to the other Party for incidental, special, indirect, exemplary, consequential or punitive damages, whatsoever, including damages for lost profits, goodwill, time, savings or data or for business interruption. Except for a Party's indemnity

obligations; the confidentiality obligations set forth in Section 4.1 of this Agreement; and the Vendor's obligation under NTS Education Law 2-d set forth in Section 4.2 and Exhibit A (the foregoing being collectively referred to as the "Exclusions"), each party's total liability to the other party for damages (other than as required by law) shall not exceed the greater of (i) \$100 or (ii) the fees paid for the Product and/or Services in the twelve (12) month period immediately preceding a claim. With respect to the Exclusions, a party's total liability will not exceed two million dollars (\$2,000,000.00). The limitations on liability set forth in this Section 6.2 shall hereby amend, supersede and replace the first two paragraphs of Section (vi) (Limitation of Liability) of the Clever General Terms of Use included in the Terms.

7. WITHDRAWAL

Vendor acknowledges that due to the nature of BOCES services, individual Licensees may from time to time, during the Initial Term of this Agreement or any Renewal Term, withdraw from or choose not to renew their participation in the applicable BOCES service for a subsequent fiscal year. Each participating BOCES (including Customer) shall provide written notification to Vendor of any such withdrawal or non-renewal by any Licensee within its jurisdiction no later than thirty (30) days prior to its effective date (typically July 1st), without penalty. Within sixty (60) days of receipt of notification, Vendor shall securely delete or otherwise destroy any and all Protected Data received from that Licensee remaining in the possession of Vendor or any of its subcontractors or other authorized persons or entities to whom it has disclosed the Protected Data. Upon request, Vendor will provide Customer and the Licensee with written certification from an appropriate officer that these requirements have been satisfied in full. For purposes of this Section 7, "Protected Data" shall have the same meaning as set forth in the Data Sharing and Confidentiality Agreement incorporated into this Agreement by reference as **Exhibit A**. Notwithstanding the non-renewal or withdrawal of any Licensee, the terms of this Agreement shall continue in full force and effect with respect to Customer and any other remaining BOCES or school district Licensees.

8. IMPLEMENTATION ASSISTANCE SERVICES AND TRAINING SUPPORT

Training will be provided upon reasonable request to district administrators and personnel at the RIC or BOCES level who contact success@clever.com and reference this Agreement. District, BOCES, or RIC level administrators may call 1 (800) 521-6516 between 7am-7pm EST to seek assistance from Vendor if they have questions. If teachers, principals or other non-administrator personnel have questions, they can reach out to Vendor's support team at <https://support.clever.com/hc/en-us>.

9. Vendor agrees that the terms of this agreement may be shared with any BOCES or District Representatives thereof.



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Any District may bind itself and the Vendor to the terms of this agreement by opting into the terms of this agreement in writing by executing an Opt In agreement. Vendor's recourse in the event of a breach of this agreement by any District or BOCES shall be limited to recourse against the breaching District or BOCES and shall not extend to any other District or BOCES.

10. APPLICABLE LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York without regard to that State's choice-of-law provisions. In the event a dispute arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve such dispute by negotiation. In the event the Parties are unable to resolve such dispute by negotiation, the matter shall be venued in any court of competent jurisdiction located in the County of Erie, State of New York and the Parties hereby agree to submit to personal jurisdiction in any such court.

11. FORCE MAJEURE

Notwithstanding anything to the contrary contained herein, neither Party shall have any liability to the other Party for any default or delay in performance of its obligations hereunder to the extent attributable to unforeseen events beyond the reasonable control of the Party. Such events shall include but not be limited to, natural disasters or "acts of God;" war; acts of public enemies; terrorism; flood; government action, orders or regulations; fire; civil disturbance or unrest; work stoppage or strike; unusually severe weather conditions; disease, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restriction (each, a "Force Majeure" event). Vendor's performance of some or all of its obligations hereunder may also cease at any time upon mutual written agreement between the Parties. Any warranty period affected by a Force Majeure event shall be extended for a period equal to the duration of such Force Majeure event.

12. CONSENT TO BREACH NOT WAIVER

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent to breach shall be in writing and signed by the Party granting the waiver or consent. If either Party grants a waiver or consent to a breach of a term or provision of this Agreement, such waiver or consent shall not constitute or be construed as a waiver of or consent to any other or further breach of that term or provision or any other different or subsequent breach of any other term or provision.

13. SEVERABILITY

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed severed from the Agreement.

14. [INTENTIONALLY OMITTED]



15. AMENDMENT

This Agreement may be amended by Customer and Vendor provided that any such changes or modifications shall be in writing signed by the parties hereto.

16. HEADINGS

The headings of the paragraphs and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

17. NOTICES

Except as otherwise provided in this Agreement, all notices required hereunder shall be in writing and sent by certified mail, return receipt requested to the Party at the address written above, or such other address as noticed to the other Party.

18. CONFLICT OF INTEREST

Vendor represents and warrants that Vendor presently has no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Vendor's obligations under this Agreement. Vendor further represents and warrants that it has not employed nor retained any person or company, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, to solicit or secure any agreement with any other participating BOCES or any school district Licensee. Further, Vendor represents that Vendor has not paid, given, or agreed to pay or give any company or person, other than a bona fide employee working solely for Vendor or the Vendor's bona fide agent, any fee, commission, percentage, brokerage fee, gift, contribution, or any other consideration contingent upon or resulting from the award or making of any agreement with any other participating BOCES or any school district Licensee. Upon discovery of a breach or violation of the provisions of this paragraph, Customer shall have the right to terminate this Agreement in accordance with subsection 1.3, however, it may do so immediately and without providing Vendor the opportunity to cure such breach or violation.

19. EMPLOYMENT PRACTICES

Vendor warrants that there shall be no discrimination against any employee who is employed in the work covered by the Agreement, or against any applicant for such employment, because of race, religion, color, sex, age or national origin. This shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other tools of compensation, and selection for training, including apprenticeship. Vendor shall be responsible for its subcontractor's compliance with applicable law consistent with this provision.

20. [INTENTIONALLY OMITTED]

21. NON-ASSIGNMENT



This Agreement shall be binding on the Parties and on their successors and assigns. Vendor is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or its right, title or interest therein, or its power to execute this Agreement or any amendment thereto, or its power to perform the obligations required by this Agreement to any other person or corporation without the previous consent, in writing, of Customer, provided that such consent shall not be required for any assignment by Vendor made in accordance with vendor's Privacy Policy in connection with any sale, divestiture or transfer of Vendor's business; and any attempts to assign the Agreement without Customer's prior written consent in violation of the foregoing are null and void.

22. ENTIRE UNDERSTANDING

This Agreement, the Terms and all Exhibits attached hereto constitute the entire understanding between Customer and Vendor .

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

CLEVER INC.

DocuSigned by:
Kevin Laughlin
By: 37251B4332534F9...

Printed Name: Kevin Laughlin

Title: CFO
2020-10-16

Date: _____

ERIE 1 BOCES

By: *James Fregelette*

Printed Name: James Fregelette

Title: Executive Director, Administrative Services & Finance

Date: 10/19/20

EXHIBIT A

DATA SHARING AND CONFIDENTIALITY AGREEMENT

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. **Purpose**

- (a) This Exhibit supplements the Master License and Service Agreement (“MLSA”) to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES’ Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES’ website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. To the extent that any term of the Terms conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) “Student Data” means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (c) “Protected Data” means Student Data and/or Teacher or Principal Data.

- (d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA and the Terms. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA and the Terms to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption, and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA as described in the Vendor's data security and privacy plan attached hereto as Exhibit C.

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws. In addition, assignees and subcontractors of Vendor will provide its officers and employees with such training as required by applicable law.
- (e) Vendor [*check one*] will will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures (as such terms are defined in Section 2-d), and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA or Terms.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.



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- (d) Not disclose any Protected Data to any other party, except for authorized representatives (such as assignees or contractors) of Vendor using the information to carry out Vendor's obligations under the MLSA or the Terms, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating Educational Agency for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.

- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly unless required by law. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Except as required by law, Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.



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EXHIBIT A (CONTINUED)

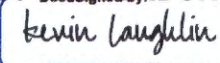
ERIE 1 BOCES

PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

BY THE VENDOR:


Signature

Kevin Laughlin
Printed Name

CFO
Title

2020-10-16

Date



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EXHIBIT A (CONTINUED)

SUPPLEMENTAL INFORMATION

**ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT
BETWEEN
ERIE 1 BOCES AND CLEVER INC.**

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA” or “Master Agreement”) with Clever Inc. which, along with the Terms (as defined in the MLSA), governs the availability to Participating Educational Agencies of the following Product(s): a technology system that is integrated into Participating Educational Agencies’ district-student information system and identity system to create easy and secure data transportation for rostering and provisioning of student accounts for partner applications, upon the request of a teacher, principal or district administrator.

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA or the Terms. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by: Vendor limits access to Protected Data only to those trusted service providers who have a legitimate need to access such data in the performance of their duties or in connection with providing services to the Participating Educational Agency. Anyone involved in the handling of Protected Data will treat such data as strictly confidential and shall not redisclose such data except as necessary in order to provide services to the Participating Educational Agency. Vendor will maintain access log(s) that record all disclosures of or access to Protected Data within its possession and will provide copies of those access log(s) to the Participating Educational Agency upon request.

Duration of MLSA and Protected Data Upon Expiration:

- The MLSA commences on July 1, 2020 and expires on June 30, 2023.
- Within sixty (60) days of the expiration of the MLSA without renewal, or within sixty (60) days of the termination of the MLSA prior to expiration, Vendor will securely delete or

otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data.

- Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data, on or any de-identified Protected Data that can be reidentified on any storage medium whatsoever after the period ending on the 60th day following termination or expiration of the Master Agreement. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.



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Supplement to
MASTER LICENSE AND SERVICES AGREEMENT
(Term Ending June 30, 2023)

Clever Inc. ("Vendor") having its principal offices at 1263 Mission Street, San Francisco, CA 94103, and Board of Cooperative Educational Services for the First Supervisory District, Erie County having its principal offices at 355 Harlem Road, West Seneca, NY 14224 ("Erie 1 BOCES"), have entered into a Master License and Services Agreement, the term of which ends June 30, 2023 (the "Agreement"). By this Supplement, Vendor and Erie 1 BOCES wish to provide for the potential use of Vendor's Products (as defined in the Agreement) services by other Board of Cooperative Educational Services (BOCES) in the State of New York (intermediate units of the NYS Education Department) on the same terms and conditions.

Erie 1 BOCES and Vendor hereby agree:

1. From time to time during the term of the Agreement, another BOCES in New York State (an "Other BOCES") may adopt a Board of Education resolution that permits Erie 1 BOCES to represent the Other BOCES' interests and to enter into the Agreement on behalf of the Other BOCES.
2. The Other BOCES shall purchase under the Agreement by issuing an Addendum in the form of a Board resolution, appropriately amended to reflect that the Other BOCES is the purchaser. By issuing that Addendum, the Other BOCES will agree to be bound by all of the terms of the Agreement with respect to its purchase thereunder.

IN WITNESS WHEREOF, the parties have signed this Supplement to Agreement.

Erie 1 Board of Cooperative Educational Services
Inc.

Clever

By: 
Authorized Signature

By: 
37251B4332534F9...
Authorized Signature

Name: James Fregelette

Name: Kevin Laughlin

Title: Executive Director

Title: CFO

Address: 355 Harlem Rd

Address: 1263 Mission Street

San Francisco, CA 94103

West Seneca, NY 14224

2020-10-16
Date: _____



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EXHIBIT B

MINIMUM REQUIREMENTS

ALL SYSTEMS AND NETWORKS MUST BE MAINTAINED AT OR ABOVE INDUSTRY STANDARDS AT ALL TIMES.

FOR DISTRICTS, SYSTEM AND NETWORK REQUIREMENTS CHANGE DEPENDING ON WHAT TYPE OF SYNC THE DISTRICT CHOOSES. HOWEVER, ALL DISTRICTS MUST WHITELIST CERTAIN PAGES.

PLEASE CHECK WITH YOUR CLEVER REPRESENTATIVE BEFORE YOU START YOUR SYNC.

EXHIBIT C

VENDOR'S DATA SECURITY AND PRIVACY PLAN

Clever Data Security and Privacy Plan

1. Clever complies with its responsibilities under all applicable state and federal laws and regulations that protect the confidentiality of personally identifiable information and Student Data

The protection of the privacy and confidentiality of Student Data is tremendously important to Clever. Student Data means any information (in any format) that is directly related to any identifiable current or former student that is maintained by Clever for, or on behalf of, its customers.

Clever complies with its responsibilities under all applicable state and federal laws and regulations that protect the confidentiality of personally identifiable information and Student Data, including the Federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g); Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. 1232; and applicable State laws governing the protection of personally identifiable information from students' educational records, including New York Educational Law Section 2-d and Part 121 of the Commissioner's Regulations. In particular, Clever:

- Limits internal access to education records to those individuals that are determined to have legitimate educational interests
- Does not use education records for any other purposes than those explicitly authorized in contracts
- Except for authorized representatives and subcontractors, does not disclose any personally identifiable information to any other party without the consent of the parent or eligible student or unless required by statute or court order and the educational agency has been given notice of the disclosure
- Maintains reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in our custody
- Does not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose and will not facilitate the use or disclosure of Personally Identifiable Information (PII) by any other party for marketing or commercial purposes.

When Clever contracts with an educational agency, district or BOCES in the State of New York, Clever agrees to comply with the data security and privacy policy of the agency, district or BOCES and the Parents Bill of Rights for Data Privacy and Security, which is incorporated into the agreement between Clever and the agency, district or BOCES. For the purposes of compliance with the laws and regulations

of New York, "Student Data" also means "student data" and "teacher or principal data" as such terms are defined by New York Education Law 2-d.

2. Clever implements administrative, operational and technical safeguards and practices to protect the confidentiality and security of PII and Student Data

Administrative:

Clever limits access to PII only to employees who have a legitimate need to access such data, in order to perform their job functions. For employees, agents and contractors who will access or process Student Data, Clever provides employee training on privacy and data security laws and best practices on a yearly basis and has implemented disciplinary processes for violations of our information security or privacy requirements. Upon termination or applicable role change, we promptly remove data access rights and/or require the return or destruction of data. Additionally, Clever conducts an annual security audit.

Technical:

Clever has adopted technologies, safeguards and practices that align with the NIST Cybersecurity Framework. Additionally, Clever uses encryption technology to protect student information while in transit and at rest. While in transit, Clever uses TLS with strong ciphers, with a preference for those with perfect-forward secrecy. While at rest, Clever uses modern cryptographic algorithms (AES256-GCM) and follows key management best practices, with strict user access control to keys. This ensures that the PII requires a particular key to decrypt and encrypt. Additionally, the controls to access and modify these keys are kept secure.

Clever's infrastructure runs on Amazon Web Services (AWS), an industry leader in cloud services and data security. AWS, and other cloud services, have experience in: running and securing servers in the cloud for many customers, navigating and managing security standards, as well as investment in network and physical security. Ernst & Young LLP performs the AWS System and Organization Controls audit, and has a publicly available report on how they meet these compliance controls and objects at <https://aws.amazon.com/compliance/soc-faqs/>.

Clever employs physical security controls, such as access controls to secure environments and virtual access controls including role-based authentication and strong password policies. Clever also utilizes secure development lifecycle practices, having security protocols inform every aspect of product and infrastructure development. This includes threat modeling and code review for major changes, separation of development and production environments, automated log collection and audit trails for production systems, and policies and procedures for network and operations management. Clever performs annual vulnerability assessments and cloud infrastructure audits..

Clever also maintains a business continuity program, with data backup and recovery capability that is designed to provide a timely restoration of Clever services with minimal data loss in the event of a catastrophic failure or disaster.

3. Compliance with the Supplement to the Parent's Bill of Rights

We comply with the obligations and representations set forth in the Supplement to the Parent's Bill of Rights. See "Supplement."

4. Clever has implemented employee training on privacy and security obligations.

Clever yearly provides employee training on privacy and data security laws and best practices on both the federal and state level. Additionally, we train new employees as a part of onboarding. Access to sensitive data systems is gated upon completion of privacy and security training.

5. Clever oversight of, and responsibility for, sub-contractors

Clever limits access to PII only to those employees or trusted service providers who have a legitimate need to access such data in the performance of their duties or in connection with providing services to Clever or on Clever's behalf. Clever requires subcontractors to be contractually bound to uphold the same standards for security, privacy, and compliance as are imposed on Clever by applicable state and federal laws and contracts. Clever reviews subcontractor contracts annually. Clever maintains access log(s) that record all disclosures of or access to PII within its possession and will provide copies of those access log(s) to the District upon request. Clever will make available a list of all such subcontractors upon request.

6. Security incident response plan

Clever has an information security incident management protocol to detect, assess, mitigate and respond to security incidents and threats. If Clever believes that there has been unauthorized acquisition or disclosure that compromises the security, integrity or confidentiality of a customer's personal information, we will take all necessary steps to notify the affected customers of the incident as quickly as possible, and in no case greater than two business days after we learn of the breach. Once the communication has been drafted and finalized, within 72 hours of discovery of the incident in the absence of any statutes or custom agreements, we will use Clever's standard outgoing email systems to send the email to the address associated with the Clever district account owner.

To the extent known, this notice will identify (i) the nature of the Security Incident, (ii) the steps we have executed to investigate the Security Incident, (iii) the type of personal information affected, (iv) the cause of the Security Incident, if known, (v) the actions we have taken or will take to remediate any deleterious effects of the Security Incident, and (vi) any corrective actions we have taken or will take to prevent a future Security Incident.

If the incident triggers any third party notice requirements under applicable laws, Clever will comply with its notification obligations under applicable law and the terms of its contractual agreement with the customer.

7. Clever's responsibility to return or destroy personal information upon termination of the agreement

The agreement with the District expires when terminated in accordance with its terms. Upon the termination of Clever's agreement with the District for any reason, Clever will, as directed by the District in writing, return or securely destroy ("securely destroy" means taking actions that render data written on physical (e.g., hard copy) or electronic media unrecoverable by both ordinary and extraordinary means) all customer PII received by Clever pursuant to the agreement. Unless and to the extent the customer submits a written request to trust@clever.com for the return of PII prior to the termination of the agreement, Clever will automatically delete or de-identify all Student Data within seventy-two (72) hours upon termination of the agreement, except for Student Data residing on backups or internal logs which will be removed within sixty (60) days. In the event the agreement is assigned to a successor contractor in accordance with the terms of the customer agreement, Clever will cooperate with the customer as necessary to transition the PII to the successor contractor prior to deletion.