



Kenton County School District | *It's about ALL kids.*

# Issue Paper

**DATE:**

September 16, 2024

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the agreement to utilize Clever rostering software for the Kenton County School District.

**APPLICABLE BOARD POLICY:**

01.1 - Legal Status of the Board

**HISTORY/BACKGROUND:**

Clever is a digital platform that provides rostering and single sign on options for students and teachers to access software products. Clever SSO (single sign on) allows students to spend more time engaging in their instructional software because it decreases the amount of time it takes students to log in. Clever Rostering provides an efficient method of uploading class rosters into approved software programs allowing for a seamless update when new students are enrolled. All students K-12 will use the software to connect to compatible and district approved programs.

**FISCAL/BUDGETARY IMPACT:**

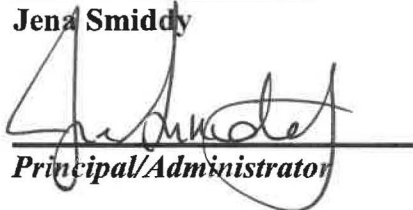
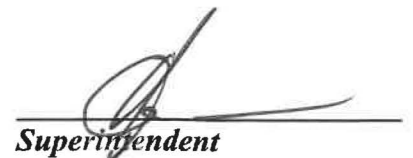
No budgetary impact (free)

**RECOMMENDATION:**

Approve the agreement to utilize Clever rostering software for the Kenton County School District.

**CONTACT PERSON:**

Jena Smiddy

  
Principal/Administrator  
District Administrator  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.*

*Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*



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# **THE KENTON COUNTY BOARD OF EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

*Dr. Henry Webb, Superintendent of Schools*

## **VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION**

### **Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Clever Inc.

Vendor Name

575 Market St., Suite 1850 San Francisco, CA 94105

Vendor Address

877-578-5572 X241

Vendor Telephone

legal@clever.com

Vendor Email Address

DocuSigned by:

Wendy Yu

6F09436D8277463

Signature by Vendor's Authorized Representative

Wendy Yu

Print Name

2024-08-09

Date



## AMENDMENT

This amendment to Clever General Terms of Use (available at <https://clever.com/trust/terms> or at such alternate location as may be provided in the future), including the Additional Terms of Use for Schools (available at <https://clever.com/trust/terms/schools> (the "Amendment") is made effective as of the date last signed ("Amendment Effective Date") by and between Clever Inc. ("Clever") and Kenton County Board of Education ("KCBOE").

WHEREAS, Clever and KCBOE wish to revise the Governing Law found in Clever's General Terms of Use;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Amendment, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth herein.

1. Section 5. VII Governing Law:.

The Parties agree to replace this section with the following: This Agreement will be governed by and construed in accordance with the laws of the State of Kentucky without regard to conflict of laws and all disputes arising under or relating to this Agreement shall be brought and resolved solely and exclusively in the State Court located in Kentucky.

2. General. Except as expressly set forth in this Amendment, this Amendment is subject to each and every provision of the Agreement, all of which are incorporated in this Amendment by reference. Except as expressly provided herein, all other provisions of the Agreement remain in full force and effect. Capitalized terms used, but not defined herein, shall have the meaning assigned to them in the Agreement. This Amendment may be executed in counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. Electronic execution and delivery of this Amendment will be legal, valid and binding execution and delivery for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused their respective duly authorized representatives to sign this Amendment as set forth below.

**Kenton County Board of Education**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

**Clever Inc.**

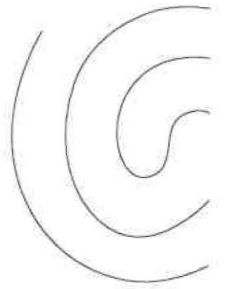
Signed by:  
Signature: Wendy Yu  
6F094360B277463...

Name: Wendy Yu

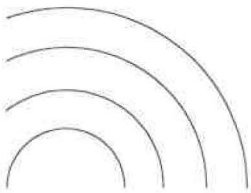
Title: Director of Legal and Privacy

Email: legal@clever.com

Date: 2024-09-18



# Clever General Terms of Use



*Effective Date: May 30, 2024*

Welcome to Clever! We're ("we", "us", or "Clever") delighted to have you on our [website](#) and maybe even using our service (the "Services"). Please continue reading to learn about the terms by which you may use our web and/or mobile services (collectively, the "Services").

These General Terms of Use apply to all: (i) schools, school districts, and related entities and organizations that sign up to use the Services, including but not limited to administrators who access the Services on their behalf (each a "School"); (ii) non-School visitors, users, and others, including students, teachers, and their parents or guardians, who use the Services; and (iii) third-party providers of software, applications or tools (each a "Developer" and

[Privacy](#) - [Terms](#)

collectively with the individuals referenced in (ii) above and Schools, the “Users” or “you”). If you’re a School, our [Additional Terms of Use for Schools](#) apply to you too. If you are a parent or guardian that creates an account on Clever (each a “Parent”), our [Additional Terms of Use for Parents](#) apply to you, too. If you’re a Developer, our [Additional Terms of Use for Developers](#) apply to you too. These General Terms of Use, the [Additional Terms of Use for Schools](#) (as applicable to Schools), [Additional Terms of Use for Parents](#) (applicable to Parents) and the [Additional Terms of Use for Developers](#) (as applicable to Developers) are collectively referred to herein as the “Agreement”.

By accessing or using the Services, checking the box marked [“I Agree”], or by otherwise affirmatively stating your desire to use the Services, you signify that you have read, understood, and agree to be bound by this Agreement and to the collection and use of your information as set forth in the Clever [Privacy Policy](#), otherwise you may not use the Services. Because our Services change relatively often, the terms in this Agreement and our Privacy Policy may change too. If you are a School or a Developer using the Services, we will notify you via email in advance of any material changes to the terms. Upon making changes, we will update the “Effective Date” found at the top of this page. Your continued use of the Services after any changes constitutes your acceptance of the new terms.

This next sentences are surrounded by stars because they are important: \*\*\*Please read these terms carefully to ensure that you understand each provision. If you are a Developer or a Parent, these terms contain a mandatory individual arbitration agreement in Section 3(viii) (the “Arbitration Agreement”) and class action/jury waiver provision in Section 3(ix) (the “Class Action/Jury Trial Waiver”) that apply to you. The Arbitration Agreement and Class Action/Jury Trail Waiver require, with only specified exceptions in Sections 3(viii) and 3(ix) or unless you opt out pursuant to the instructions in Section 3(viii), the exclusive use of final and binding arbitration on an individual basis only to resolve disputes, rather than jury trials or class, collective, private attorney general or representative actions or proceedings. \*\*\*

## SECTION 1. WHAT ARE CLEVER’S SERVICES AND WHO CAN USE THEM?

What do we do? We provide Schools both data integration and single sign-on functionality, making it easier for Schools to choose, deploy, and control software, applications or tools made available by Developers that are used by their teachers and students, as well as to use certain Clever software applications we may make available to access the Services via a website or mobile device (our “App”). We also operate an online application marketplace

where Developers can offer to sell subscriptions to their own software applications for direct distribution to Schools (the “Clever App Store”).

You’re allowed to use the Services only if you can form a binding contract with Clever, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. If you’ve been removed from the Services previously, you’re not allowed to use them again.

Subject to the terms and conditions of this Agreement, Clever grants to you permission to access and use the Services. We reserve all rights not expressly granted to you in the Services and the Clever Content (as defined below). We may terminate this license at any time for any or no reason.

## **i) DETAILS ABOUT THE CLEVER SERVICES**

Your Clever account gives you access to our Services, but don’t sign up on behalf of a School if you do not have the requisite authority to do so. Once you sign up, you are responsible for your account and any data associated with it.

Your Clever account gives you access to the Services and functionality we make available from time to time and at our discretion, which may include single sign-on capability for certain applications made available by Developers. We maintain different types of accounts for different types of Users. If you open a Clever account on behalf of a School or a Developer, then (a) “you” includes you and that entity, and (b) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement and that you agree to this Agreement on the entity’s behalf.

Remember: you are responsible for any activity that occurs on your account, you may never use someone else’s account without permission, and you must keep your account password secure. We recommend using multi-factor authentication and long passphrases that have not been reused with any other service with your account to avoid unauthorized use (see [here](#) for more guidance). Please let us know immediately if you think your account’s security has been compromised so we can help; we are not liable for any losses of any kind caused by any unauthorized use of your account.

## **ii) WHAT CONTROL DO I HAVE OVER MY USE OF THE SERVICES?**

You may control your profile and how you interact with the Services by changing the settings in your [settings page](#). By providing your email address to us you consent to our using the email address to send you Services-related notices, including any required legal notices and

other messages, such as additions or changes to the Services and/or notices of product offers. You may opt out or change your preferences in your [settings page](#). While we need your email address to send you important Services-related notices, you can always ask us to stop sending you certain marketing messages. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

### iii) RESTRICTED USES

Please don't do anything to harm our product or try to hack our Services. Specifically, by using the Services, you agree not to do any of these things: (i) copy, distribute, or disclose any part of the Services in any medium, including but not limited to by any automated or non-automated "scraping"; (ii) use any automated system, including but not limited to "robots," "spiders," "offline readers," etc., to access the Services in a manner that sends more request messages to the Clever servers than a human can reasonably produce in the same period of time by using a conventional online web browser; (iii) transmit spam, chain letters, or other unsolicited email; (iv) attempt to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (v) take any action that imposes, or may impose an unreasonable or disproportionately large load on our infrastructure; (vi) transmit any malicious software agents through the Services; (vii) collect or harvest any third-party personally identifiable information, including account names or Student Data (as defined below), from the Services; (viii) use the Services for any commercial solicitation purposes; (ix) impersonate another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfere with the proper working of the Services; (xi) access any content on the Services through any technology or means other than those provided or authorized by the Services; or (xii) bypass the measures we use to prevent or restrict access to the Services, including but not limited to features that prevent or restrict use or copying of any content or enforce limitations on use of the Services or related content; or (xiii) upload, publish or otherwise make available illegal content on the Services.

We continually update our Services to offer the best possible product. While we plan to continue to offer and improve our Services, we may, without prior notice, change, cancel, create usage limits for, or permanently or temporarily stop offering or allowing you access to the Services generally ("Service Changes"). While we'll try to give you advance notice of Service Changes that will adversely affect you, this might not be practical or possible and we retain the right to make Service Changes without notice and liability for any reason. If this Agreement ends you continue to be bound by it in any interactions you may have with the Services.

You are fully responsible for your interactions with other Users, and we have no liability for your interactions with any other Users, or for any User's actions or inactions with respect to you.

#### iv) USER CONTRIBUTIONS

The Services may contain interactive features like personal messaging and product review functions that allow Users to post, submit, publish, display, or transmit (collectively, “Share”) messages, content and other materials (“User Contributions”) to Users or other persons content or materials on or through the Services. All User Contributions must comply with this Agreement.

By Sharing User Contributions through our Services, you agree to allow others to view, edit, share, and/or interact with those User Contributions in accordance with your settings and this Agreement. We have the right (but not the obligation) in our sole discretion to monitor and remove any User Contributions that are Shared via our Services. You hereby grant each User a non-exclusive license to access your User Contributions through our Services, and to use, reproduce, distribute, display and perform your User Contributions, which you make available to such User through our Services. You further grant, and represent and warrant that you have all rights necessary to grant, to us an irrevocable, perpetual, transferable, sublicensable (through multiple tiers), fully paid, royalty-free, and worldwide right and license to use, copy, store, modify, distribute and display your User Contributions: (a) to maintain and provide our Services; (b) other User Contributions submitted as personal messaging, to improve our products and services and for our other business purposes, such as data analysis, customer research, developing new products or features, and identifying usage trends; and (c) to perform such other actions as described in the Clever Privacy Policy or as authorized by you in connection with your use of our Services.

You represent and warrant that you own or control all rights in and to the User Contributions, have the right to grant the licenses granted above, and all of your User Contributions do and will comply with this Agreement.

You understand and acknowledge that you are responsible for any User Contributions you Share, and you, not we, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness. We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other User.

We have the right to:

- Remove or refuse to post any User Contributions in our sole discretion.
- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates this Agreement, infringes any intellectual property right or other right of any person or entity, threatens the safety of Users or the public, or could create liability for us.



- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services.
- Terminate or suspend your access to all or part of the Services for any or no reason, including without limitation, any violation of this Agreement.

Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Services. This next sentence is surrounded by stars because it is important: \*\*\* You waive and hold us and our affiliates, licensees, and service providers harmless from any claims resulting from any action we or our affiliates, licensees, and service providers take during, or taken as a consequence of, investigations related to such cooperation. \*\*\*

We cannot review all User Contributions before they are Shared, and cannot ensure prompt removal of objectionable material after it has been posted. We assume no liability for any action or inaction regarding transmissions, communications, or content provided by any User or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described above.

#### **v) ADDITIONAL TERMS APPLICABLE TO OUR APP**

To use our App you must have a mobile device that is compatible with the App. Clever does not warrant that our App will be compatible with your mobile device. You may use mobile data in connection with our App and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Clever hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of our App for one Clever User account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer our App, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer our App to any third party or use the App to provide time sharing or similar services for any third party; (iii) make any copies of our App; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of our App, features that prevent or restrict use or copying of any content accessible through our App, or features that enforce limitations on use of our App; or (v) delete the copyright and other proprietary rights notices on our App. You acknowledge that Clever may from time to time issue upgraded versions of the App, and may automatically electronically upgrade the version of the App that you are using on your mobile device. You

consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in our App is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of our App or any copy thereof, and Clever or its third-party partners or suppliers retain all right,

# Clever

[Log in](#)

being acquired on behalf of the United States Government, then the following provision applies. Our App will be deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Services and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Service and is prohibited except to the extent expressly permitted by these Terms of Service. Our App originates in the United States, and is subject to United States export laws and regulations. Our App may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, our App may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of our App and the Services.

The following applies if you acquire our App from the Apple App Store (“Apple-Sourced Software”): You acknowledge and agree that this Agreement is solely between you and Clever, not Apple, Inc. (“Apple”) and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to Clever as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Clever as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-

Sourced Software infringes that third party's intellectual property rights, Clever, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and Clever acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

## SECTION 2. RIGHTS IN OUR CONTENT

"Student Data" is any information (in any format) that is directly related to any identifiable current or former student that is maintained by a School, and may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA") that Schools provide to us. While we may need to access Student Data to provide the Services to you, Schools own the Student Data and remain responsible for it. Our [Additional Terms of Use for Schools](#), [Additional Terms of Use for Developers](#), and [Privacy Policy](#) provide more detail around how we handle Student Data.

"Intellectual Property Rights" means all worldwide patent rights, copyright rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all related applications and registrations, renewals and extensions.

Except for Student Data or the applications made available by Developers, the Services and all materials made available to you in connection with them, including, but not limited to, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and any content belonging to other Users (the "Clever Content"), and all related Intellectual Property Rights, are the exclusive property of Clever and its licensors. Except as specified in this Agreement, nothing may be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Clever Content. To be clear: any use of the Clever Content for a purpose not expressly permitted by this Agreement is strictly prohibited.

If you send us ideas or comments about our Services, you agree that we may freely use or reference those ideas and comments and we do not owe you any payment or have any other obligation of any kind for such ideas or comments.

## SECTION 3. GENERAL LEGAL TERMS

## i) CLEVER DATA

Certain parts of the Services may allow you to obtain or access analytics or other data or information associated with your account ("Clever Data"). The data elements we collect and use to create Clever Data depends on your student information system ("SIS") type and the applications you are working with. You can find the data elements used by each application by going to your dashboard.

Clever Data is licensed to you for your use on a limited basis, and is governed solely by the terms of this Agreement and available for distribution only at our sole discretion. Clever owns the account you use to access the Services along with any rights of access or rights to data stored by or on behalf of Clever on Clever servers (except with respect to any Student Data that we may be storing for you), including but not limited to any data representing any or all of your Clever Data. Clever has the right to manage, control and even eliminate Clever Data, except that Clever may only use Student Data as specifically permitted by this Agreement. These next sentences are surrounded by stars because they are important: \*\*\* You understand and agree that any data, account history and account content residing on Clever's servers may be deleted at any time for any reason in Clever's sole discretion, with or without notice and with no liability of any kind. We do not provide or guarantee, and expressly disclaim, any value, cash or otherwise, attributed to any data residing on Clever's servers. If you're a School, you should be absolutely sure to keep copies of Student Data in your SIS or in other secure storage. You should not rely on us to provide copies of or access to your student data. \*\*\*

## ii) PRIVACY AND SECURITY

We take very seriously the privacy of our users, including schools, teachers, parents, and students. By using the Services you consent to the collection, use and disclosure of your information (including but not limited to Student Data) as set forth in our [Privacy Policy](#) and, if you're a School, in the [Additional Terms of Use for Schools](#), and to have your information (including but not limited to Student Data) collected, used, transferred to and processed in the United States pursuant to our [Privacy Policy](#).

## iii) THIRD-PARTY SERVICES

Our Services may incorporate or contain links to websites, products, applications, services, related product and service descriptions, marketing materials and/or other content or information made available by Developers or other third party providers (collectively, "Third-party Materials"). Keep in mind that we do not endorse or assume any responsibility for any Third-party Materials (including but not limited to software or applications made available by Developers via the Clever App Store or otherwise). If you access or use any Third-party Materials or engage with a third-party Developer from or within the Services, you understand that you do so at your own risk, and you understand that this Agreement, the [Additional](#)



Terms of Use for Schools, Additional Terms of Use for Developers, and our Privacy Policy do not apply to your use of those Third-party Materials, which have their own applicable terms and policies. Additionally, your dealings with Developers found on or through the Services, including for payment, use of your Student Data by the Developers, and your agreement to any terms and conditions of such Developers (such as warranties or privacy policies) are only between you and such Developers. We are not responsible for any loss or damage of any sort relating to your dealings with such Developers or other Third-party Providers.

Without limiting the foregoing, with respect to any use of Google Classroom as integrated with the Services, you agree to comply with the Google APIs Terms of Service and such other terms and conditions as Google may provide from time to time.

#### **iv) INDEMNITY**

You agree to defend, indemnify and hold harmless Clever and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including but not limited to your breach of any of the representations and warranties; (iii) your violation of any third-party right, including but not limited to any right of privacy or Intellectual Property Rights; (iv) your violation of any applicable law, rule or regulation, including but not limited to FERPA, the Protection of Pupil Rights Amendment ("PPRA"), and the Children's Online Privacy and Protection Act ("COPPA"); (v) any content or information that is submitted via your account; or (vi) any other party's access and use of the Services with your unique username, password or other appropriate security code.

These next few sections are surrounded by stars so we can be sure we have your attention because they are important. Again, please feel free to contact us by visiting our Help Center if any of this is unclear or if you have any questions about what these sections mean.

#### **v) WARRANTY DISCLAIMER**

\*\*\* The Services are provided on an "as is" and "as available" basis. Use of the Services is at your own risk. To the maximum extent permitted by applicable law, the Services are provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Without limiting the foregoing, Clever, its subsidiaries, its affiliates, and its licensors do not warrant that the Clever Content is accurate, reliable or correct; that the Services will meet your requirements; that the Services will be available at any particular time or location, uninterrupted; that any defects or errors will be corrected; or that the Services are free of viruses or other harmful components. Any content downloaded or otherwise obtained through the use of the Services is downloaded at your own risk and you will be solely

responsible for any damage to your computer system or loss of data that results from such download or your use of the Services. \*\*\*

\*\*\* We do not warrant, endorse, guarantee, or assume responsibility for any Third-party Materials (including without limitation Developers' applications or any product or services advertised or offered by a third party through the Services), and we will not be a party to or in any way monitor any transaction between you and third-party providers of Third-Party Materials (including without limitation Developers). \*\*\*

Federal law, some states, provinces and other jurisdictions do not allow exclusions and limitations of certain implied warranties, so some of the above limitations may not apply to you.

## **vi) LIMITATION OF LIABILITY**

\*\*\* To the maximum extent permitted by applicable law, in no event shall Clever, its affiliates, agents, directors, employees, suppliers or licensors be liable for any indirect, punitive, incidental, special, consequential or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, that result from the use of, or inability to use, the Services. Under no circumstances will Clever be responsible for any damage, loss or injury resulting from hacking, tampering or other unauthorized access or use of the Services or your account or the information contained therein. \*\*\*

\*\*\* To the maximum extent permitted by applicable law, Clever assumes no liability or responsibility for any (i) errors, mistakes, or inaccuracies of content; (ii) personal injury or property damage, of any nature whatsoever, resulting from your access to or use of our services; (iii) any unauthorized access to or use of our secure servers and/or any and all personal information stored therein; (iv) any interruption or cessation of transmission to or from the services; (v) any malicious software agents that may be transmitted to or through our services by any third party; (vi) any errors or omissions in any content or for any loss or damage incurred as a result of the use of any content posted, emailed, transmitted, or otherwise made available through the services; and/or (vii) content you create or the defamatory, offensive, or illegal conduct of any third party. In no event shall Clever, its affiliates, agents, directors, employees, suppliers, or licensors be liable to you for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount you paid to Clever hereunder or \$100.00, whichever is greater. \*\*\*

\*\*\* This limitation of liability section applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Clever has been advised of the possibility of such damage. The foregoing limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction. \*\*\*

The Services are controlled and operated from US-based facilities, and we make no representations that they're appropriate or available for use in other locations. If you access



or use the Services from other jurisdictions, you understand that you're entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. Because we have to say this, you may not use the Services if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government.

#### **vii) GOVERNING LAW**

You agree that: (i) the Services will be deemed solely based in California; and (ii) the Services will be deemed passive services that do not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than California. This Agreement will be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. You acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") governs the interpretation and enforcement of the Arbitration Agreement in Section 3(viii) and preempts all state laws to the fullest extent permitted by law. If the FAA is determined to not apply to any issue that arises from or relates to the Arbitration Agreement, then that issue shall be resolved under and governed by the law of your state of residence. The application of the United Nations Convention on Contracts for the International Sale of Goods does not apply. You agree to submit to the exclusive personal jurisdiction of the federal and state courts located in Santa Clara County, California for any actions related to this Agreement. You agree that Santa Clara County, California is the proper and exclusive forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

#### **viii) ARBITRATION**

\*\*\* Read this section carefully because it requires Parents and Developers to arbitrate their disputes and limits the manner in which they can seek relief from Clever. \*\*\*

If you are a Parent or a Developer, then this section (the "Arbitration Agreement") applies to and governs any dispute, controversy, or claim between you and Clever that arises out of or relates to, directly or indirectly: (a) this Agreement, including the formation, existence, breach, termination, enforcement, interpretation, validity, or enforceability thereof; (b) access to or use of the Services, including receipt of any advertising or marketing communications; (c) any transactions through, by, or using the Services; or (d) any other aspect of your relationship or transactions with us, directly or indirectly, as a consumer ("Claim" or collectively, "Claims"). The Arbitration Agreement shall apply, without limitation, to all Claims that arose or were asserted before or after your agreement to this Agreement.

If you are a new User, you can reject and opt-out of this Arbitration Agreement within 30 days of accepting this Agreement by emailing us at [legal@clever.com](mailto:legal@clever.com) with your first and last name

and stating your intent to opt-out of the Arbitration Agreement. Note that opting out of this Arbitration Agreement does not affect any other part of this Agreement, including the provisions regarding controlling law or in which courts any disputes must be brought. For any Claim, you agree to first contact us at [legal@clever.com](mailto:legal@clever.com) and attempt to resolve the dispute with us informally. In the unlikely event that we have not been able to resolve a Claim after sixty (60) days, we each agree to resolve any Claim exclusively through binding arbitration by AAA before a single arbitrator (the "Arbitrator"), under the Expedited Procedures then in effect for AAA (the "Rules"), except as provided herein. In the event of any conflict between the Rules and this Arbitration Agreement, this Arbitration Agreement shall control. AAA may be contacted at [www.adr.org](http://www.adr.org), where the Rules are also available. The arbitration will be conducted in the U.S. county where you live or Delaware, unless we agree otherwise. If you are using the Services for commercial purposes, each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. If you are an individual using the Services for non-commercial purposes: (i) AAA may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from AAA; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. You and Clever agree that the Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Agreement, any provision of the Agreement, is unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, unconscionability, or estoppel.

Nothing in this section shall be deemed as: preventing us from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights; or preventing you from asserting claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances on only an individual (non-class, non-representative) basis.

If this Arbitration Agreement is found to be void, unenforceable, or unlawful, in whole or in part, the void, unenforceable, or unlawful provision, in whole or in part, shall be severed. Severance of the void, unenforceable, or unlawful provision, in whole or in part, shall have no impact on the remaining provisions of the Arbitration Agreement, which shall remain in force,

or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement. Notwithstanding the foregoing, if the Class Action/Jury Trial Waiver below is found to be void, unenforceable, or unlawful, in whole or in part, because it would prevent you from seeking public injunctive relief, then any dispute regarding the entitlement to such relief (and only that relief) must be severed from arbitration and may be litigated in a civil court of competent jurisdiction. All other claims for relief subject to arbitration under this Arbitration Agreement shall be arbitrated under its terms, and the parties agree that litigation of any dispute regarding the entitlement to public injunctive relief shall be stayed pending the outcome of any individual claims in arbitration.

#### **ix) CLASS ACTION / JURY TRIAL WAIVER**

\*\*\* With respect to all Parents and Developers, regardless of whether they have obtained or used the Services for personal, commercial or other purposes, all claims must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class action, collective action, private attorney general action or other representative proceeding. This waiver applies to class arbitration, and unless we agree otherwise, the arbitrator may not consolidate more than one person's claims. You and Clever agree that the arbitrator may award relief only to an individual claimant and only to the extent necessary to provide relief on your individual claim(s). Any relief awarded may not affect other users. You and Clever further agree that , by entering into this Agreement, you and Clever are each waiving the right to a trial by jury or to bring, join, or participate in a class action, collective action, private attorney general action, or other representative proceeding of any kind as a plaintiff or class member. \*\*\*

#### **x) DMCA NOTICE**

Since we respect artist and content owner rights, it is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 ("DMCA"). If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Services, please notify our copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

1. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
2. Identification of the copyrighted work that you claim has been infringed;
3. Identification of the material that is claimed to be infringing and where it is located on the Services;
4. Information reasonably sufficient to permit us to contact you, such as your address, telephone number, and, e-mail address;

5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
6. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to the following DMCA Agent:

Attn: DMCA Notice

Legal Department

Tel.: 1-877-578-5572

Email: [legal@clever.com](mailto:legal@clever.com)

\*\*\* Under Federal Law, if you knowingly misrepresent that online material is infringing, you may be subject to criminal prosecution for perjury and civil penalties, including monetary damages, court costs, and attorneys' fees. \*\*\*

This procedure is exclusively for notifying us that your copyrighted material has been infringed. The requirements above are intended to comply with our rights and obligations under the DMCA, but do not constitute legal advice. It may be advisable to contact an attorney regarding rights and obligations under the DMCA and other applicable laws. In accordance with the DMCA and other applicable law, we have a policy of terminating, as appropriate, Users deemed to be repeat infringers. We may also choose to limit access to the Services and terminate the accounts of Users who infringe intellectual property rights of others, whether or not there is any repeat infringement.

#### **xi) ILLEGAL CONTENT NOTICE**

To protect the safety of users on our website, illegal content is not permitted pursuant to Section 1(iii) of these General Terms and Conditions. It is our policy to respond to notices of alleged illegal content on our Services, and we may potentially remove any user content that violates these Terms of Service. Content that is considered illegal includes, without limitation, terrorist content, child sexual abuse material and/or illegal hate speech.

If you see content that you believe or suspect is illegal, please send an e-mail to [legal@clever.com](mailto:legal@clever.com) with a request to review and remove the content. Please include your reasoning for suspecting or asserting that the content is illegal.

Upon receipt of a notice of alleged illegal content, we will conduct a human review of the allegation. The content will be reviewed by a panel of three members from our legal and finance teams. Any decision made by our reviewers will include the reasons for the decision and we will inform the affected parties. In certain cases, we may also submit it for publication as required by the EU Digital Services Act. If you wish to appeal the decision, you may request an appeal in writing. Appeals will be handled to an escalated review by three members of the executive team, who will conduct a second human review of whether the content violates our Terms of Service. Any decision made by our executive team will also include the reasons for the decision and will be shared with the requester.

Please note that we are only able to remove content that is made available on Clever's Services, which does not include content that may appear on or be available through applications from Developers. If there is objectionable content on a Developers application, you will need to communicate with the Developer directly.

## **xii) SEVERABILITY AND WAIVER**

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by us in accordance with the terms of our [Privacy Policy](#). This Agreement, together with any amendments and any additional agreements you may enter into with Clever in connection with the Services including other agreements referenced herein, constitute the entire agreement between you and Clever concerning the Services. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions of this Agreement, which will remain in full force and effect. No waiver of any term of this Agreement will be deemed a further or continuing waiver of such term or any other term, and Clever's failure to assert any right or provision under this Agreement will not constitute a waiver of such right or provision. If access to the Services is licensed to the United States government or any agency thereof, then the Services will be deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFARS Section 227.7202 and FAR Section 12.212, respectively, as applicable. Any use, reproduction, release, performance, display, or disclosure of the Services and any accompanying documentation by the U.S. Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement. Neither party will hold themselves out to be joint venturers, and neither party is authorized or empowered to act as the agent of the other.

## **xiii) HOW TO CONTACT US**

If you have any questions about this Agreement, please contact us by visiting our [Help Center](#).

Additionally, Clever can be reached:

By Email: [trust@clever.com](mailto:trust@clever.com)

By Phone: 1-800-521-6516

All notices shall be in writing and will be delivered by email, or by overnight courier at such address as either party may specify in writing in accordance with this Section. All notices will be effective upon receipt. If a notice is sent to Clever, please send a copy to [legal@clever.com](mailto:legal@clever.com)



## Solutions

For schools

For partners

For teachers

For parents

## Data & Access

Rostering for Partners

Rostering for Schools

SSO for Partners

SSO for Schools

Clever LMS Connect for Partners

Clever Badges

Clever Analytics

## Digital Classroom

Classroom Portal

Clever Library

Clever Messaging

## Identity & Security

Identity Management

Multi-factor Authentication

## Other Products

Interoperability

Clever Global

## Services

Clever Academy

Consulting Services

24/7 Support

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