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**OAKLAND UNIFIED  
SCHOOL DISTRICT**

Community Schools, Thriving Students

# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Vernon Hal, Senior Business Officer *VER*  
Susan Beltz, Chief Technology Officer *SB*  
11-8-17

**Board Meeting Date**

**Subject** Ratification of a Service Agreement between Oakland Unified School District and Clever, Inc. for a subscription to Clever Goals for \$10,000

**Action Requested** Ratification of a Service Agreement between Oakland Unified School District and Clever, Inc. for a subscription to Clever Goals for \$10,000 for the 2017-18 school year.

**Background** Clever powers learning technology in 60,000 schools across the country. They keep learning applications synced in real-time and give students and teachers an easy-to-use, personalized, one-login experience through the use of Clever launch pages and Clever badges for primary grades.

Oakland Unified School District has a current relationship with Clever to provision students into Google G-Suite as well as instructional technology vendors. It is through our existing relationship with Clever that we are choosing to become one of Clever's early adopters of Clever Goals. This new program is designed to provide insight into not only how often a student uses a learning application, but what that student's progress is towards mastery. The information will be provided to district-level administrators, site administrators, and teachers to use as a metric to gauge a student's progress as well as how well adopted the application is across each site or within the district. This is a first of its kind program and one that has long been needed in education as it leverages student progress data to assist us in determining which paid applications are making a difference for students.

For the 2017-18 school year Technology Services in collaboration with Teaching and Learning chose to take a hiatus from offering the BrightBytes survey of school and staff technology proficiency and replace it with Clever Goals as a means of identifying educational technology programs that positively impact student performance.

Ultimately, we intend to use the data collected to inform our purchases of educational technology across our schools. The cost savings to the district is \$30,000 for 2017-18.

**Discussion**

Clever Goals will be rolled out in the 2017-18 school year to five self-selected school sites across the district and will receive access to the Clever Goals dashboard as well as training on how to use and interpret the information. In addition, students' raw usage and progress data will be made available for all schools and provided to our Research and Development (RAD) department to augment student and site dashboards to be used in determining student proficiency levels. The cost of providing the Clever Goals Dashboard at five district sites is \$2,000 per site, or \$10,000 total, with the additional 81 sites gaining free raw data.

**Recommendation**

Ratification of a Service Agreement between Oakland Unified School District and Clever, Inc. for \$10,000.

**Fiscal Impact**

Funding Resource: Licensing-9999994701

**Attachments**

- Clever Service Agreement
- Exhibit A - Terms of Use for Schools
- Exhibit B - Privacy Policy
- Addendum No. 1 to the Clever Terms of Use
- Purchase Order
- Contract Justification Form



## CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office  
With Consent Agenda Contract.**

**Legislative File ID No.** 17-2177

**Department:** Technology Services

**Vendor Name:** Clever, Inc.

**Contract Term:** Start Date: 6/21/2017 End Date: 6/20/2019

**Annual Cost:** \$ 10,000.00

**Approved by:** Susan Beltz

**Is Vendor a local Oakland business?** Yes ☐ No ☒

### Why was this Vendor selected?

For the 2017-18 school year Technology Services in collaboration with Teaching and Learning chose to take a hiatus from offering the BrightBytes survey of school and staff technology proficiency and replace it with Clever Goals as a means of identifying educational technology programs that positively impact student performance. Ultimately, we intend to use the data collected to inform our purchases of educational technology across our schools. The cost savings to the district is \$30,000 for 2017-18.

### Summarize the services this Vendor will be providing.

Clever Goals will be rolled out in the 2017-18 school year to five self-selected school sites across the district and will receive access to the Clever Goals dashboard as well as training on how to use and interpret the information. In addition, students' raw usage and progress data will be made available for all schools and provided to our Research and Development (RAD) department to augment student and site dashboards to be used in determining student proficiency levels.

**Was this contract competitively bid?** Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

First of its kind solution for assessing effectiveness of educational technology programs.



2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☐ **Professional Service Agreements** of less than \$86,000 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts
- ☐ **Technology** contracts
  - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
  - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
  - ☐ Western States Contracting Alliance Contracts (WSCA)
  - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☒ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**

## **Clever, Inc.-Oakland Unified School District 2017 Services Agreement**

This Services Agreement (the "Agreement"), effective as of the last date of signature on the signature page (the "Effective Date"), is by and between Clever, Inc., a Delaware corporation with offices located at 1263 Mission Street, San Francisco, CA ("Clever", "our", "Company" or "we") and the Oakland Unified School District ("you", "your", "OUSD" or "School"). The parties agree as follows:

This Agreement applies to you and the related entities and organizations that sign up to use the Services, including but not limited to administrators who access the Services (as defined in Section 1 below) on your behalf, as well as all non-School visitors, users, and others, including students, teachers, and their parents, who use the Services (such individuals and Schools, collectively, "Users" or "you"). You represent and warrant that you are an authorized representative of the School with the authority to bind the School to this Agreement and that you agree to this Agreement on the School's behalf.

### **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 made available by Developers that are used by their teachers and students as well as to use certain software we may make available to access the Services via a mobile device (an "App").

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 "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols, and are not reused with any other service) with your account to avoid unauthorized use. 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 service. 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.

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. Except as provided for in Addendum No. 1 or as otherwise agreed upon by the parties in writing, 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) ADDITIONAL TERMS APPLICABLE TO OUR APP**

To use any App you must have a mobile device that is compatible with the App. Company does not warrant that the App will be compatible with your mobile device. You may use mobile data in connection with the App and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Company hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the App for one Company 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 the App, except to the extent that such restriction is



expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the 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 the App; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the App, features that prevent or restrict use or copying of any content accessible through the App, or features that enforce limitations on use of the App; or (v) delete the copyright and other proprietary rights notices on the App. You acknowledge that Company 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 the 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 the App or any copy thereof, and Company or its third-party partners or suppliers retain all right, title, and interest in the App (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. Company reserves all rights not expressly granted under this Agreement. If the App is being acquired on behalf of the United States Government, then the following provision applies. The 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. The App originates in the United States, and is subject to United States export laws and regulations. The 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, the 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 the App and the Services.

The following applies to any App you acquire from the Apple App Store ("Apple-Sourced Software"): You acknowledge and agree that this Agreement is solely between you and Company, 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 Company 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 Company 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, Company, 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 Company 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, OUSD owns the Student Data and remains 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. Current versions of our Additional Terms of Use for Schools and Privacy Policy are included as Exhibits.

“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. DURATION AND TERMINATION**

This Agreement commences on the Effective Date, and continues until it is terminated as provided for herein.

The “Initial Term” shall be for two years from the date of the Effective Date. Any future Renewal Term shall be explicitly agreed upon in writing as an addendum or extension of this agreement.

Either party may terminate this Agreement as of the end of the Initial Term or the then-current Renewal Term by giving written notice to the other party at least 30 days’ prior to the end of the Initial Term or the then-current Renewal Term. In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement and does not substantially cure such default within 30 days’ after written notice thereof, the non-defaulting party may terminate this Agreement immediately upon written notice to the defaulting party. Upon termination of this Agreement for any reason, all rights and licenses granted by Clever hereunder will immediately cease, and in connection therewith, you will immediately cease to use the Services.

In no event will termination relieve you of your obligation to pay any fees payable to us for the period prior to the effective date of termination.

Provisions that by their nature should survive termination will survive termination, such as provisions relating to warranty disclaimers, representations and warranties, confidential information, export controls, limitations of liability, indemnities, and governing law.

## **SECTION 4. 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 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, as amended by the Addendum No. 1, 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.

This next sentence is in bold letters because it's 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 secure copies of Student Data in your Student Information System ("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](#) (Exhibit B).

## iii) THIRD-PARTY SERVICES

Our website may contain links to third-party websites, services (including but not limited to applications made available by Developers), or other materials or information that are not owned or controlled by us. Keep in mind that we do not endorse or assume any responsibility for any third-party sites, information, materials, products, or services (including but not limited to applications made available by Developers). If you access a third party website or application made available by Developers from 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](#) (Exhibit A), [Additional Terms of Use for Developers](#), and our [Privacy Policy](#) (Exhibit B) do not apply to your use of those sites or services—those sites and services have their own applicable terms and policies. Additionally, your dealings with Developers found on the Services, including payment, use of your Student Data by the Developers, and any other terms (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.

## 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 third party claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's



fees) arising from: (i) your violation of any third-party right, including but not limited to any right of privacy or Intellectual Property Rights; (ii) 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"); (iii) 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.

Clever agrees to defend, indemnify and hold harmless OUSD and its employees, agents, officers and directors, from and against any and all third-party claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Clever's violation of any third-party right, including but not limited to any right of privacy or Intellectual Property Rights; or (ii) or Clever's 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) WARRANTY DISCLAIMER**

These next few sections are bold lettered so we can be sure we have your attention (conspicuous code). Formerly, this section was in capital letters, but that makes this important information even more difficult to read. 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.

The services is 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 is 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 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 is 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 product or services advertised or offered by a third party through the services or any hyperlinked website or services (including without limitation applications), and we will not be a party to or in any way monitor any transaction between you and third-party providers of products or services (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 : (a) any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount OUSD paid to Clever hereunder or \$100,000.00, whichever is greater; and (b) any amounts related to its obligations under Section (iv) in excess of \$500,000.

In no event shall OUSD, its agents, directors, or employees be liable to Clever for (a) any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount OUSD is obligated to pay to Clever hereunder or \$100,000.00, whichever is greater; and (b) any amounts related to its obligations under Section (iv) in excess of \$500,000.

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 laws of the State of California, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods does not apply. You agree to submit to the personal jurisdiction of the federal and state courts located in Alameda County, California for any actions related to this Agreement.

**viii) Assignment:** The obligations of Clever under this Agreement shall not be assigned by Clever without the express prior written consent of OUSD, except Clever may assign this Agreement in its entirety, upon notice to OUSD but without the requirement to obtain consent, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of the party's equity or assets. In the event that such an assignment occurs, OUSD may terminate the agreement with 30 days written notice.

**ix) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** Clever certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency



according to Federal Acquisition Regulation Subpart 9.4, and by signing this agreement, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

**x) Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. Clever agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

**xi) Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

**xiii) Contract Publicly Posted:** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

**xiv) 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/addenda 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 any party'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.

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

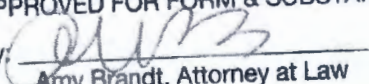
**School**

By: 

Name: Susan Beltz

Title: Chief Technology Officer

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE

By:   
Amy Brandt, Attorney at Law

**Clever Inc.**

By: 

Name: Carolyn Ajnassian

Title: Head of District Success

Date: 10/10/17



Date: 10/17/17

Oakland Unified School District  
Address: 1000 Broadway, Ste 440  
Oakland, CA 94607

## **Exhibit A**

### **Terms of Use for Schools**

Capitalized terms that are not defined below in this Exhibit A have the definitions given to them in the Agreement.

#### **SECTION 1. KEEPING YOUR STUDENT DATA CONFIDENTIAL (THIS IS VERY IMPORTANT TO US) AND COMPLYING WITH APPLICABLE LAWS**

We treat your Student Data as confidential and do not knowingly share it with third parties other than as described in Section 2(B) and in the General Terms of Use and our Privacy Policy.

Both parties agree to uphold their responsibilities under the Family Educational Rights and Privacy Act ("FERPA"), the Protection of Pupil Rights Amendment ("PPRA"), and the Children's Online Privacy and Protection Act ("COPPA"). We provide the Services under the school official exception of FERPA 34 CFR Part 99.31(a)(1). The Children's Online Privacy and Protection Act ("COPPA") requires that online service providers obtain clear and verifiable parental consent before collecting personal information from children under 13. You represent and warrant that you have received consent from parents, or have the authority to provide consent on behalf of parents, for us to collect information from students before allowing children under 13 to access our Services. We recommend that all Schools provide appropriate disclosures to students and parents regarding their use of service providers such as Clever and that they provide a copy of our Privacy Policy to parents and guardians.

#### **SECTION 2. AUTHORIZATION TO ACCESS YOUR STUDENT DATA**

##### **A. OUR ACCESS**

You authorize us to access Student Data and will provide a way for us access the information stored in your SIS. We will access and process Student Data only in order to provide the Services. As between us, you own all right, title and interest to all Student Data, you are (and other Schools are) solely responsible for any and all Student Data, whether provided by you, students, or others, and we do not own, control, or license Student Data, except to provide the Services.

##### **B. THIRD PARTY ACCESS**

You may designate one or more third-party Developers to securely access Student Data via our API. We will not send Student Data to a Developer unless explicitly authorized by you. You acknowledge that we are not responsible for the data practices of third party Developers, and that, as between us, you are solely responsible for the consequences of providing or transmitting Student Data to such Developers, or authorizing those Developers to access Student Data through the Services. At any time, you can revoke any Developer's ongoing access to Student Data via the API by visiting our Help Center.

We provide access to Student Data only to those employees and certain trusted service providers who have a legitimate need to access such information in connection with providing the Services to you. Of course, anyone involved in the handling of Student Data will treat such data as strictly confidential and shall not redisclose such data except as necessary in order to provide the Services. We will maintain access log(s) that record all disclosures of or access to Student Data within our possession and will provide copies of those access log(s) to you on your request.



## **C. OTHER ACCESS**

Student Data is controlled by Schools. Parents, legal guardians, and students can ask for their Student Data via their Schools. If there are any changes that need to be made in Clever, the district will upload the new Student Data to Clever.

## **SECTION 3. HOW WE USE YOUR STUDENT DATA**

### **A. IN GENERAL**

By submitting Student Data or other information to us, whether via the Services or otherwise, you expressly grant, and you represent and warrant that you have all rights necessary to grant, to us a non-exclusive, royalty-free, worldwide license during the term of these Additional Terms for Schools and our General Terms of Use to use, transmit, distribute, modify, reproduce, display, and store the Student Data only for the purposes of: (i) providing the Services as contemplated in these Additional Terms for Schools and our General Terms of Use, and (ii) enforcing our rights under these Additional Terms for Schools and our General Terms of Use. Subject to the Paragraph B below, we will not use the Student Data for any purpose except as explicitly authorized by these Additional Terms for Schools and our General Terms of Use. For clarity and without limitation, we will not use Student Data to engage in targeted advertising.

### **B. ANONYMIZED DATA**

You agree that we may collect and use data derived from Student Data, including data about any Users' access and use of the Services, that has been anonymized, aggregated, or otherwise de-identified such that the data cannot reasonably identify a particular student, User, or School. We may use such data to operate, analyze, improve or market our Services. If we share or publicly disclose information (e.g., in marketing materials) that is derived from Student Data, that data will be aggregated or anonymized to reasonably avoid identification of a specific School or individual student. For example, we may (i) track the number of School administrators on an anonymized aggregate basis as part of our marketing efforts to publicize the total number of Users of the Services, and (ii) analyze aggregated usage patterns for product development efforts. You further agree that we may use, store, transmit, distribute, modify, copy, display, sublicense, and create derivative works of the anonymized, aggregated Student Data even after this Agreement has expired or been terminated.

## **SECTION 4. DELETING STUDENT DATA AND TERMINATING YOUR ACCESS TO THE SERVICES**

### **A. DELETING STUDENT DATA**

You may request in writing that we delete any of your Student Data (except as provided for the Section 3(B) above) in our possession at any time. We will comply with your request in a commercially reasonable time not to exceed ten (10) business days. If you grant access to Student Data to a Developer and subsequently need that data deleted, you need to request such deletion directly from that Developer.

### **B. TERMINATING YOUR ACCESS TO THE SERVICES**

Schools may, at any time and for any or no reason, terminate these Additional Terms for Schools and our General Terms of Use by providing written notice by visiting our Help Center, except that provisions that by their nature should survive termination will survive termination, such as provisions relating to warranty disclaimers, limitations of liability, indemnities, and governing law.

Within seventy-two (72) hours of our receipt of such notice of termination or earlier if commercially reasonable to do so, we will cease accessing your SIS. We will automatically delete or de-identify all Student Data within seventy-two (72) hours of our receipt of the termination notice, except for Student Data residing on backups or internal logs which will be removed within sixty (60) days, and will provide notice to the School when Student Data has been deleted and/or anonymized as described in Section 3(B) above. As noted above, Student Data that has previously been made available to Developers may still be in Developers' possession notwithstanding the School's termination of these Additional Terms for Schools and our General Terms of Use, and the Developer's subsequent use or deletion will be governed by any agreements between School and Developers. We may terminate these Additional Terms for Schools and our General Terms of Use in accordance with the General Terms of Use.

## **SECTION 5. PRIVACY AND SECURITY**

We care deeply about the privacy and security of Student Data. We maintain strict administrative, technical, and physical safeguards to protect Student Data stored in our servers, which are located in the United States. We limit access to Student Data only to those employees or service providers who have a legitimate need to access such data in the performance of their duties, and we provide employee training on privacy and data security laws and best practices. If there is any disclosure or access to any personally identifiable Student Data by an unauthorized party, we will promptly notify OUSD and any affected Schools and will use reasonable efforts to cooperate with their investigations of the incident. If the incident triggers any third party notice requirements under applicable laws, you agree that, as the owner of the Student Data, you may be responsible for the timing, content, cost, and method of any required notice and compliance with those laws. However, at the request of OUSD and when permissible under applicable law, Clever agrees to bear responsibility for the timing, content and method of such required notice on behalf of OUSD. In all instances, Clever will indemnify OUSD for all reasonable costs associated with compliance with such notice requirements arising from a breach of the Clever Service. For clarity and without limitation, Clever will not indemnify for any notification costs arising from a breach of a third party application whose service is accessed through the Clever Service.

## **SECTION 6. QUESTIONS**

We here at Clever hope that you will have the best possible experience when using our Services. If you have any questions or concerns about our Services or anything in our General Terms of Use, these Additional Terms for Schools, or our Privacy Policy, please don't hesitate to contact us by visiting our Help Center and we'll do our best to promptly respond to you.



## **Exhibit B**

### **Privacy Policy**

Clever is a proud signatory of the Student Data Privacy Pledge.

Clever ("Clever," "we," or "us") understands that privacy is tremendously important to our online visitors to our website ("Website Visitors"), to schools who use our Service ("OUSD" or "Schools"), and to students whose information we may access on behalf of a School ("Students"). Clever provides a platform that enables Schools to securely provision the accounts with the third-party applications, that they use. As we describe below, Schools decide which data is integrated with Clever, and Schools are responsible for determining whether data are ever shared with applications through Clever. This privacy policy applies to our website <https://clever.com/> and to the Clever platform (our "Service") and describes the steps we take to protect your data.

Capitalized terms that are not defined in this Privacy Policy have the meaning given them in our Terms of Use.

We strive to be transparent in our data collection and use practices. This is the type of personal information we may collect.

#### **1. HOW WE COLLECT AND USE INFORMATION**

We collect the following types of information:

**Information about Schools:** We ask for certain information when a School administrator registers a School with Clever, or if the administrator corresponds with us online, including a name, school name, school district, school email address and/or account name and password, phone number, message content, and information relating to the School's information systems. We may also retain information provided by a School if the School sends us a message, posts content to our website or through our Service, or responds to emails or surveys. Once a School begins using the Clever Service, we will collect content and information provided by the School through the School's use of the Service and we will keep records of activities related to the Service. We use this information to operate, maintain, and provide to the features and functionality of the Service, to analyze and improve our Service offerings and functionality, and to communicate with our Schools and website visitors.

**Student Data:** Through the course of providing its Service to a School, Clever may have access to personally identifiable information about students ("Student Data") that is provided by the School, by the parent or guardian, or by the Student. Clever has access to Student Data only as requested by the School and only for the purposes of performing Services on the School's behalf. The type of Student Data we collect will depend on how the School uses the Service and the learning applications which the School connects through the Service. In many instances, Clever receives Student Data only from the School and never interacts with the Student directly. In some instances, depending on the level of Clever's Service selected by the School, the Schools may allow Students to log into the Clever Service to access third party applications that have been authorized by the School. In that instance, the School provides each student with login credentials and confirms that it has obtained appropriate parental consents, as needed, before the student is permitted to access the Service.

**Badges:** As an alternative to a user name and password login, a School may choose to use the Clever Badge to authenticate Student users. The Clever Badge is a QR code provided by the School to the Student (usually in the form of a laminated card or paper print-out) which recognizes a user's Clever account when the Badge is read by the camera on a



Chromebook, laptop or other device. Clever does not collect or store any image collected by the device camera. The camera content is processed on the users' device and Clever only receives the tokens used for authentication. You can learn more about Clever Badges [here](#).

We consider Student Data to be confidential and do not use such data for any purpose other than to provide the services on the School's behalf, in accordance with contractual agreements with the School. Our collection, use, and disclosure of Student Data is governed by our Terms of Use, our Additional Terms of Use for Schools, and/or any other agreement with the School, by the provision of the Family Educational Rights and Privacy Act (FERPA), the Children's Online Privacy Protection Act (COPPA), and applicable state laws which relate to the collection of Student Data. If you are a Student or parent, please contact your School if you have questions about the School's use of technology service providers like Clever.

See "How We Share Your Information" below for more information on the limited ways in which we share School and Student Data. See "Children's Privacy" below for more information on how we collect and use the personal information of children under 13.

**Information collected through technology:** Like most websites and online services, we and our third party partners automatically collect certain types of usage information when you visit our Services, read our emails, or otherwise engage with us. We typically collect this information through a variety of tracking technologies, including cookies, web beacons, file information and similar technology (collectively, "tracking technologies"). For example, we collect information about your device and its software, such as your IP address, browser type, Internet service provider, platform type, device type, operating system, date and time stamp, a unique ID that allows us to uniquely identify your browser, mobile device or your account, and other such information. We also collect information about the way you use our Service, for example, the site from which you came and the site to which you are going when you leave our website, the pages you visit, the links you click, how frequently you access the Service, whether you open emails or click the links contained in emails, whether you access the Service from multiple devices, and other actions you take on the Service. When you access our Service from a mobile device, we may collect unique identification numbers associated with your device or our mobile application, mobile carrier, device type, model and manufacturer, mobile device operating system brand and model. We may be able to determine your approximate location by analyzing other information, a device's location by analyzing other information, like an IP address to associate a user with their School. We may also collect analytics data, or use third-party analytics tools, to help us measure traffic and usage trends for the Service. Although we do our best to honor the privacy preferences of our visitors, we are not able to respond to Do Not Track signals from your browser at this time.

Cookies and related technology allow us to provide you with a better user experience. For example, we may use the data collected through cookies to: (a) remember information so that a user will not have to re-enter it during subsequent visits; (b) provide custom, personalized content and information; (c) to identify you across multiple devices; (d) to provide and monitor the effectiveness of our Service; (e) monitor aggregate metrics such as total number of visitors, traffic, and usage on our website and our Service; (f) diagnose or fix technology problems; (g) help users efficiently access information after signing in, and (h) otherwise to plan for and enhance our Service

If you would prefer not to accept cookies, most browsers will allow you to: (i) change your browser settings to notify you when you receive a cookie, which lets you choose whether or not to accept it; (ii) disable existing cookies; or (iii) set your browser to automatically reject cookies. Please note that doing so may negatively impact your experience using the Service, as some features and services on our Service may not work properly. Depending on your mobile device and operating system, you may not be able to delete or block all cookies. You may also set your e-mail options to prevent the



automatic downloading of images that may contain technologies that would allow us to know whether you have accessed our e-mail and performed certain functions with it.

**Third Party Tracking:** We do not permit third party advertising networks to collect information about your use of our website and Service over time and across websites for the purpose of serving targeted advertising and we will never use Student Data for targeted advertising.

Student privacy is very important to us. Student Data is used only for educational purposes at the discretion of the School.

## **2. HOW WE SHARE YOUR INFORMATION**

Clever only shares personal information in a few limited circumstances, described below. We do not rent or sell information for marketing purposes and we will never share or sell Student Data with third parties for marketing purposes.

Who we may share information with:

We share information within the Service as needed to perform the Service and/or at the direction of the School. For example, information including Student Data, will be shared between and among authorized School users such as teachers and School administrators. This sharing will depend on the settings and functionality selected by the School.

We may share information with our trusted third party service providers who perform technology services on our behalf (e.g. web hosting and analytics services), but strictly for the purpose of carrying out their work for us. Contractors and service providers who may have access to Student Data in the course of performing their services are subject to confidentiality and data security requirements.

We may be required to share information with law enforcement or other third parties when compelled to do so by court order or other legal process, to comply with statutes or regulations, to enforce our Terms of Use, or if we believe in good faith that the disclosure is necessary to protect the rights, property or personal safety of our users.

We may share information in an aggregated and/or anonymous form that does not reasonably identify an individual or School. For example, we may use and share aggregate or anonymized data to study and improve our Service, user functionality, and product offerings.

**In the event of a change of control:** If we sell, divest or transfer our business, we will not transfer personal information of our customers unless the new owner intends to maintain and provide the Service as a going concern, and provided that the new owner has agreed to data privacy standards no less stringent than our own. In such case we will provide you with notice and an opportunity to opt-out of the transfer of personally identifiable Student Data.

**How Student Data is shared:** In addition to the actions described above, Clever may facilitate the sharing of Student Data with third parties, though only when instructed and authorized to do so on behalf of the School. Some elements of our Service enable Schools to interact with parents, students, teachers and third party applications, for the benefit of the student's education. Clever does not facilitate the sharing of any Student Data with third parties on the Service except on behalf of the School after the School has authorized a third party or application to access Student Data through the Service. Please remember that this Privacy Policy applies to the Clever Services, and not other services or third party applications, which may have their own privacy policies. Schools should carefully read the privacy practices of each third party application before agreeing to engage with the application through the Service.

We store our data in the United States and we take strong measures to keep data safe and secure.

### **3. HOW WE STORE AND PROTECT YOUR INFORMATION**

**Storage and processing:** Any information collected through the Service is stored and processed in the United States. If you use our Service outside of the United States, you consent to have your data transferred to the United States.

**Keeping information safe:** Clever maintains strict administrative, technical and physical procedures to protect information stored in our servers, which are located in the United States. Access to information is limited (through user/password credentials and two factor authentication) to those employees who require it to perform their job functions. We use industry-standard Secure Socket Layer (SSL) encryption technology to safeguard the account registration process and sign-up information. Other security safeguards include but are not limited to data encryption, firewalls, and physical access controls to building and files.

Questions about data? Here are your options.

### **4. YOUR CHOICES ABOUT YOUR INFORMATION**

**Account information and settings:** Schools may update account information and modify Services by signing into the administrator account. Schools and other website visitors can opt-out of receiving promotional email from us by clicking on the “unsubscribe” feature at the bottom of each email. Sorry, you cannot unsubscribe from Service-related messaging.

If you have any questions about reviewing or modifying account information, contact us directly by visiting our Help Center.

**Access to Student Data:** Student Data is provided and controlled by the Schools. If you have any questions about reviewing, modifying, or deleting personal information of a student, please contact your School directly.

**How long we keep User Content:** Following termination or deactivation of a School account, Clever may retain profile information and content for a commercially reasonable time for backup, archival, or audit purposes, but any and all Student Data associated with the School will be deleted promptly. We may maintain anonymized or aggregated data, including usage data, for analytics purposes. If you have any questions about data retention or deletion, please contact us by visiting our Help Center.

We do not collect any information from students without consent.

### **5. CHILDREN'S PRIVACY**

Clever does not knowingly collect any information from children under the age of 13 unless and until the School has obtained appropriate parental consent for the student to use the Service. Because Clever collects and uses Student Data at the direction of and under the control of a School, Clever relies on each School to provide appropriate notice to parents of the School's use of third party service providers such as Clever, and for the Schools to provide consent, if necessary, and authorization for Clever to collect Student Data, as permitted by the Children's Online Privacy Protection Act (COPPA). Please contact us at [urgent@clever.com](mailto:urgent@clever.com) if you believe we have inadvertently collected personal information of a child under 13 without proper consent so that we may delete such data as soon as possible.

### **6. LINKS TO OTHER WEB SITES AND SERVICES**



We are not responsible for the practices employed by websites, applications or services linked to or from our Service. We recommend that the School review the privacy policies of other applications before authorizing a third party to access data through the Service.

## **7. HOW TO CONTACT US**

If you have any questions about this Privacy Policy or the Service, please contact us by visiting our Help Center.

If a Student contacts Clever with a question about our Service, we will collect personal information from that Student only as necessary to respond to the Student's request and direct the Student to contact the Student's School, and we will then delete or anonymize the personal data of the Student after providing our response.

## **8. CHANGES TO OUR PRIVACY POLICY**

Clever may modify or update this Privacy Policy from time to time so you should review this page periodically. Click [here](#) to see all changes to this Privacy Policy. If we change the policy in a material manner, for example if we seek to use personal information in a materially different way than we had previously, we will provide at least 30 days notice to the Schools so that you have sufficient time to evaluate the change in practice. Of course, you can always opt-out by deleting your account before the changes take effect.

### Addendum No. 1 to the Clever Terms of Service

This Addendum No. 1 ("**Addendum**") is hereby entered into by and between Oakland Unified School District, a school (the "**Local Education Agency**") and Clever, Inc. ("**Clever**"), a Delaware corporation, as of June 21, 2017 ("**Effective Date**") and amends that certain Clever Terms of Service agreed upon on 10/17/2017 between Clever and Local Education Agency (the "**Terms**").

WHEREAS, Clever provides the Services to its customers, including schools, school districts and the Local Education Agency, and Clever offers access and use of the Clever Goals as an add-on feature to the Services; and

WHEREAS, the Local Education Agency wishes to procure and use Clever's proprietary Clever Goals (as defined below) in conjunction with the Services;

NOW THEREFORE, the Local Education Agency and Clever now desire to supplement the Terms as follows:

1. Definitions. All capitalized terms used but not expressly defined herein shall have the meanings attributed to them by the Terms.

2. Clever Goals. Subject to the terms and conditions of the Terms and this Addendum, commencing on the Clever Goals Start Date and throughout the rest of the Addendum Term, Clever will use commercially reasonable efforts to host, operate and maintain Clever Goals for the Local Education Agency's and its Schools' access and use of the Clever Goals in accordance with the Terms and this Addendum. For purposes of the Terms and this Addendum, Clever Goals will be deemed a part of the Services. "**Clever Goals**" provides the Local Education Agency with the following functionality:

a. Aggregation of certain data points related to Users use of Applications to enable the Local Education Agency to track actual usage of the Applications and progress related to the Goals;

b. Clever Goals Data Feed. The ability to export certain data points from the Services to allow the Local Education Agency to store and further use these data points; and

c. Clever Goals Dashboards. The ability for the Local Education Agency to set certain usage and progress goals (the "**Goals**") related to Users use of applications made available via the Services by Developers (each, an "**Application**") and display the data to administrators, teachers, and students;

3. The Local Education Agency acknowledges and agrees that Clever Goals is a functionality that requires the Developer of each Application to integrate the Application with Clever Goals to enable the functionality described above. Clever will use commercially reasonable efforts to have each Developer integrate their Application(s) with Clever Goals, but cannot guarantee the availability of each Application through Clever Goals during the Addendum Term.

4. Fees and Payment Terms.

a. Fees. As consideration for Clever providing Clever Goals, the Local Education Agency will pay Clever the following fees (collectively, the "**Fees**");

Package	Early Adopter Annual Fee
<i>Early Adopter Package</i>	\$10,000

b. Early Adopter Package. The Early Adopter Package includes access to the Clever Goals Data Feed for all schools within the Local Education Agency, and access to the Clever Goals Dashboards for five (5) schools



chosen by the Local Education Agency. If the Local Education Agency would like to use the Clever Goals Dashboards with additional Students, the Local Education Agency will: (i) communicate to Clever the number of Students (via email is acceptable), and (ii) pay Clever a pro-rata fee of \$3 per Student per year.

c. Payment. Clever will have the right to invoice the Local Education Agency for the applicable Fees: (i) on or anytime after the Effective Date, (ii) within 30 days before each anniversary of the Clever Goals Start Date thereafter, and (iii) upon any increase in the number of Local Education Agencies or the Number of Students. The Local Education Agency will pay all invoices hereunder in full within 30 calendar days after the date of invoice. All fees will be paid in U.S. Dollars and amounts are non-refundable. In the event that any fee due hereunder is not paid within 30 days of the date such payment is due, Local Education Agency will pay interest to Clever on such unpaid amount at a rate of 2% per month, or the highest rate permitted by applicable law, whichever is lower, until the full amount due is paid.

d. Taxes. Upon Clever's request, the Local Education Agency will provide Clever with a certificate documenting the Local Education Agency's tax-exempt status.

5. Term. This Addendum will begin on the Effective Date and continue in full force and effect for a period of one year from August 1, 2017 (the "**Clever Goals Start Date**," cumulatively the "**Addendum Term**"). If Clever makes any material adverse change to Clever Goals, then Clever will provide Local Education Agency with notice within 15 days after such changes are made, and Local Education Agency may terminate this Addendum No. 1 with five (5) days' notice if Local Education Agency does not agree to such changes. Either party may terminate this Addendum for cause upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period ("Uncured Material Breach"). If this Agreement is terminated by Local Education Agency due to Clever's Uncured Material Breach, Clever will refund you any prepaid fees covering the remainder of the duration of the Addendum Term after the effective date of termination. If this Addendum is terminated by Clever for the Local Education Agency's Uncured Material Breach, Local Education Agency will pay any unpaid fees covering the remainder of the duration of Addendum Term,

6. Severability. If any provision of the Terms, or portion thereof, is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction to any extent, such invalid provision or portion thereof will be severed from the remaining provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

7. Entire Terms. The Terms, as modified and supplemented by this Terms, constitutes the entire and exclusive agreement between the parties with respect to the subject matter hereof and thereof. If any provisions of this Addendum to the Terms conflict or are otherwise contrary to the original terms of the Terms, the terms of this Addendum prevail.

8. Counterparts. This Terms may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Facsimile or electronically signed counterparts shall be deemed to be originals.

9. Contract Contingent on Governing Board Approval. The Local Education Agency shall not be bound by the terms of this Addendum No. 1 until it has been formally approved by the Local Education Agency's Governing Board, and no payment shall be owed or made to Clever absent that formal approval. This Addendum No. 1 shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

Except as specifically modified herein, all other terms and conditions contained in the Terms between the Local Education Agency and Clever shall remain unchanged and in full force and effect.

Local Education Agency:  
Oakland Unified School District

By: Susan E Beltz  
Name: Susan Beltz  
Title: Chief Technology Officer  
Date: 10/17/17

Address: Oakland Unified School District  
1000 Broadway, Ste 440  
Oakland, CA 94607

Clever Inc.

By: Daniel Carroll  
Name: Daniel Carroll  
Title: Chief Product Officer  
Date: 10/17/2017

Address: 1263 Mission Street,  
San Francisco, CA 94103

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE

By: Amy Brandt  
Amy Brandt, Attorney at Law

James Harris  
James Harris  
President, Board of Education

Kyla R. Johnson-Trammell  
Kyla R. Johnson-Trammell  
Secretary, Board of Education

File ID Number: 17-2177  
Introduction Date: 11-8-17  
Enactment Number: 17-1666  
Enactment Date: 11-8-17  
By: