



Washington County School District

RESTRICTION ON USE OF CONFIDENTIAL INFORMATION AGREEMENT

With Clever, Inc.

Date 6/3/2019

PRODUCT

Clever Inc.

LINK TO PRODUCT TERMS OF SERVICE / TERMS OF USE

<https://clever.com/about/terms>

RESTRICTION ON USE OF CONFIDENTIAL INFORMATION AGREEMENT

I. Parties

This Restriction on Use of Confidential Information Agreement (hereinafter “Agreement”) is made and entered into by and between Clever, Inc. (hereinafter “Contractor”) and Washington County School District (hereinafter “District”). This Agreement is entered into in connection with the District’s use of Contractor’s products and services governed by the Terms of Service located at <https://clever.com/about/terms> (including the Additional Terms for Schools and Privacy Policy, collectively, the “Service Agreement”). To the extent any such addition, deletion or modification results in any express conflict or inconsistency between the Service Agreement and this Agreement, this Agreement shall govern and the terms of the Services Agreement that expressly conflict with this Agreement shall be of no force or effect.

II. Definitions.

A. “Personally Identifiable Student Data”: Student data that identify or are used by the holder to identify a student, and include, but are not limited to: a student’s first and last name; the first and last name of a student’s family member; a student’s or a student’s family’s home or physical address; a student’s email address or other online contact information; a student’s telephone number; a student’s social security number; a student’s education entity student identification number; a student’s social media user name and password or alias; if associated with personally identifiable student data, a student’s persistent identifier, including a customer number held in a cookie or a processor serial number; a combination of a student’s last name or photograph with other information that together permits a person to contact the student online; information about a student or a student’s family that a person collects online and combines with other personally identifiable student data to identify the student; and other information that is linked to a specific student that would allow a reasonable person in the school community, who does not have first-hand knowledge of the student, to identify the student with reasonable certainty. (UCA§53E-9-301(18))

Personally identifiable student data also include all student information protected by the Family Educational Rights and Privacy Act, 20 U.S. Code §1232g and 34 CFR Part 99 (hereinafter “FERPA”), the Government Records and Management Act U.C.A. §63G-2 (hereinafter “GRAMA”), UCA §53E-9-301 et seq and Utah Administrative Code R277-487.

B. “Confidential Employee Information”: Information regarding District employees that is not public under GRAMA (UCA. §63G-2-301). The primary purpose of this Agreement is for Contractor to protect personally identifiable student data for District, but to the extent that purpose shall include Contractor access to District employee information (hereinafter “Confidential Employee Information”), Contractor shall protect the confidentiality of District employee information consistent with UCA §63G-2-302(1)(g), Utah Administrative Code R277-487 and other applicable provisions of State and federal law.

C. “Confidential District Data”: Collectively, Personally Identifiable Student Data and Confidential Employee Information.

III. Purpose

A. Contractor and District desire to enter into an Agreement wherein Contractor will provide services to District that may require Contractor to have access to Confidential District Data. This Agreement provides terms and conditions under which that data and information may be accessed, collected, used, stored, maintained and/or shared by Contractor.

B. District intends to contract with Contractor as provided in the Service Agreement which makes protection of Confidential District Data necessary and of significant importance, as required by law.

IV. The Parties agree as follows:

A. Personally Identifiable Student Data shall not be released or shared with Contractor in any form or manner unless expressly authorized by District in writing or pursuant to the Service Agreement. No Student's biometric identifier, student's health or disability data shall be shared with Contractor. This information accessed as necessary by Contractor, shall be protected and held in the strictest confidence subject to penalties in UCA §53E-9-310 and other provisions of State and federal law.

B. Contractor shall never share Personally Identifiable Student Data received from the District with a third party (other than the District or the parents of the student in question), except as provided in this Agreement, the Service Agreement or specifically allowed for in writing by parents of students or eligible students, as defined in FERPA.

C. Personally Identifiable Student Data do not include de-identified or aggregate student data of student groups greater than 10 students that the reasonably informed person could not extrapolate back to individual students and Contractor may use such de-identified or aggregate student data in accordance with the Service Agreement.

D. Contractor shall never use or disclose Personally Identifiable Student Data for marketing purposes.

E. Contractor will implement, maintain and use appropriate administrative, technical and physical security measures to preserve Confidential District Data to which it has access.

F. Contractor will provide the District with a secure means of transmitting confidential information to Contractor and use only that means.

G. All Confidential District Data shall remain the sole property of the District, consistent with Utah Administrative Code R277-487-3 B(5).

H. District shall have authority and access to monitor and maintain control of the data, consistent with Utah Administrative Code R277-487.

I. Upon the termination of services provided by Contractor, Contractor will comply with the provisions of Section VIII of this Contract and eliminate all Personally Identifiable Information from its possession.

J. Confidential District Data does not include information currently in the public domain, lawfully accessible under GRAMA, or FERPA, available through the District's websites, including District school websites, information lawfully in Contractor's possession, or received by Contractor from an individual lawfully free to disclose information.

K. Confidential District Data may only be shared by Contractor with parties other than the District or the parents of the students in question consistent with UCA 53E-9-309(3),(4), (6), (7) and (8) and the Service Agreement.

L. Contractor may share confidential data, to include Personally Identifiable Student Data, with a third party for the explicit purpose to provide the service defined in this Agreement and the Service Agreement, so long as the third party's data sharing agreement with the Contractor is as restrictive or more restrictive than this Agreement. For avoidance of doubt, this provision does not apply to Developers (as defined in

the Service Agreement), with whom Contractor may share Personally Identifiable Student Data when authorized by the District in order to provide the Services (as defined in the Service Agreement).

V. Audit

A. At the request of the District, District shall have the right to audit Contractor for the purpose of verifying Contractor's compliance with this Agreement, as required under §53E-9-309 (2)(e).

B. District shall provide reasonable notice to (no less than 30 days) Contractor prior to an audit.

VI. Notification in the event of breach

If there is a breach in Contractor's system that is primarily caused by Contractor's acts and/or omissions and results in unauthorized access to Confidential District Data, Contractor shall pay the cost of responsibilities identified in UCA §53E-9-304, including District's costs for notifying parents, eligible students (consistent with FERPA definitions) and employees, as appropriate.

VII. Sharing Confidential District Data

Confidential District Data may only be shared consistent with UCA §53E-9-1308, UCA 63G-2- 301 and only as provided by the terms of this Agreement, the Service Agreement or with express written permission from the District and/or parents or eligible students, as required by law.

VIII. Termination, cancellation, expiration or other conclusion of this Agreement

A. Within 30 days of termination, cancellation, expiration, or other conclusion of this Agreement, upon District's written request, Contractor shall return all confidential information to District in a format mutually agreed upon by the parties and regardless after 60 days of termination or expiration, Contractor will permanently and securely overwrite and delete all Personally Identifiable Student Data related to the Contractor's work.

C. Both parties understand that if District requests that Confidential District Data are deleted under this Agreement, the Confidential District Data will still be stored on Contractor's secure back-up servers and will be deleted over time, consistent with Contractor's data deletion policy and schedule.

D. Should there be a termination of this Agreement and District requests deletion of Confidential District Data consistent with this Agreement, Contractor will be solely liable for secure maintenance of District's Confidential Data until the information is finally destroyed on Contractor's back-up system.

IX. Assignment

No Party to this Agreement shall assign its rights or duties hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

X. Governing Law

This Agreement will be governed by and interpreted in accordance with the laws of the State of Utah, without giving effect to its principles of conflicts of law.

XI. Modification

This Agreement may not be modified except by the mutual written consent of both parties.

XII. Compelled Disclosure

In the event that the Contractor or anyone to whom it transmits confidential District data becomes legally required to disclose any such confidential information, the Contractor shall provide the District with

prompt notice so that the District may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, Contractor shall furnish only that portion of the confidential District data which is legally required to be furnished in the opinion of the District.

XIII. Irreparable harm The Contractor acknowledges that all Confidential District Data disclosed or provided to it under this Agreement are held by the Contractor in trust for the sole benefit of the District. The Contractor acknowledges that any disclosure or misappropriation of any of the Confidential District Data in violation of this Agreement may cause the District irreparable harm and/or harm that is impossible to quantify, and therefore agrees that the District shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the District shall deem appropriate. Such right of District is to be in addition to the remedies otherwise available to the District at law or in equity.

XIV. Term of the Agreement

This Agreement will automatically renew for a period of five (5) years, beginning on the date Agreement is signed. Parties may agree to a second automatic renewal period by a signed statement by both parties to that effect. Either party may terminate the Agreement with or without cause by providing written notice 60 days in advance of the proposed termination date to the other party.

XV. Payment Terms

Payment terms, if any, will be outlined in a separate agreement.

XVI. Additional Provisions

In the event of any conflict between this Agreement and the Service Agreement, the terms of this Agreement shall prevail.

To the maximum extent permitted by applicable law, in no event shall Contractor and its affiliates be liable to District for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the amount District paid to Contractor hereunder or \$25,000.00, whichever is greater.

XVII. Signatures

Washington County School District

DocuSigned by:

Larry Bergeson

Name: Larry G. Bergeson

Title: District Superintendent

Date: 6/3/2019

Contractor:

DocuSigned by:

Carolyn Ajnassian

Name: Carolyn Ajnassian

Title: Head of District Success

Date: 6/3/2019