

CONFIDENTIALITY ADDENDUM

(Prohibiting Redisclosure of Confidential Student Records and Information)

This Confidentiality Addendum (“Addendum”) is made and entered into by and between Clever, Inc. (“Clever”) and Platte Valley Schools (Weld County School District No. RE-7) (the “District”). Clever and the District are collectively referenced herein as the “parties.” This Addendum adds the Clever General Terms of Use available at: <https://clever.com/about/terms> entered into on or about the date hereof between Clever and the District (the “Contract”) by adding to and modifying the Contract as set forth herein. To the extent any addition to, deletion from or modification of the Contract results in any conflict or inconsistency between the Contract and this Addendum, this Addendum shall govern and the terms of the Contract that conflict with this Addendum or are inconsistent with this Addendum shall be of no force or effect. For the avoidance of doubt, the parties agree that the limitation of liability provision set forth in the Contract will govern this Addendum. In consideration of the mutual covenants, promises, understandings, releases and payments described in the Contract and this Addendum, the parties agree to amend the Contract by adding the following language:

1. Definitions.

1.1 As used in this Addendum, “personally identifiable information” is defined as information that can be used to identify a specific student so as to 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. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s social security number, student number or biometric record; and (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name.

1.2 As used in this Addendum, “education records” is defined as records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as Clever.

1.3 As used in this Addendum, “confidential student records and information” is defined as education records and personally identifiable information concerning District students, including but not limited to confidential student records and information disclosed to, collected by and/or generated by Clever. Confidential student records and information does not include “de-identified confidential student records and information,” as defined in section 1.5 below.

1.4 As used in this Addendum, “collect” is defined as the gathering of data and other information by any means, including but not limited to the use of logs, cookies, tracking pixels, etc.

1.5 As used in this Addendum, “de-identified confidential student records and information” is defined as confidential student records and information from which all personally identifiable information, and the ability to determine any personally identifiable information, is removed.

1.6 As used in this Addendum, “securely destroy” is defined as removing confidential student records and information from Clever’s systems, paper files, hard-copy and electronic records, databases and any other media regardless of format, in accordance with the standard detailed in the National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization, so that the confidential student records and information are permanently irretrievable in [VENDOR’S] normal course of business.

1.7 As used in this Addendum, “eligible student” is defined as a student who is at least 18 years of age or who is legally emancipated.

2. **Ownership of Confidential Student Records and Information.** All confidential student records and information shall remain the exclusive property of the District and all rights, title and interest in the confidential student records and information, including but not limited to intellectual property rights in the confidential student records and information, belong to and are retained solely by the District. The District hereby grants to Clever a limited, nonexclusive license to access, view, collect, generate and use confidential student records and information solely for the purpose of performing its obligations as further detailed under the Contract.

3. **Security of Confidential Student Records and Information.**

3.1 Clever shall store and process confidential student records and information in accordance with commercial best practices, including implementing appropriate administrative, physical and technical safeguards that are no less rigorous industry standard practices to secure such confidential student records and information from unauthorized access, disclosure, alteration and use. Clever shall ensure that all such safeguards, including the manner in which confidential student records and information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including but not limited to the Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 to -112. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, Clever warrants that all electronic confidential student records and information will be encrypted in transmission and at rest.

3.2 Clever shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Clever shall promptly notify the District in the event of: (a) any security or privacy breach concerning confidential student records and information; and/or (b) any use or disclosure of student personally identifiable information not authorized under the Contract or this Addendum.

4. **Use of Confidential Student Records and Information.**

4.1 Under the Contract, Clever may access, view, collect, generate and/or use confidential student records and information only under the following terms and conditions: (a) Clever shall not disclose confidential student records and information, in whole or in part, to any other party except as described in the Contract and as requested or authorized by District; (b) Clever shall not use any confidential student records or information to advertise or market to students or their parents/guardians; (c) Clever shall access, view, collect, generate and use confidential student records and information only to the extent necessary to perform its obligations under the Contract; and (d) at the conclusion of the term of the Contract Clever shall, as directed by the District, either securely destroy all confidential student records and information in its possession, custody or control, or return such confidential student records and information to the District.

4.2 Clever may use de-identified confidential student records and information for purposes of research, the improvement of its products and services, and/or the development of new products and services. In no event shall Clever re-identify or attempt to re-identify any de-identified confidential student records and information.

4.3 Clever shall promptly furnish to the District upon request all confidential student records and information collected and/or generated by Clever and not in the District’s possession. Such requests may include but shall not be limited to those made in order to respond to parent/guardian and

eligible student requests to inspect and review education records as authorized under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”) and/or under the Colorado Open Records Act, C.R.S. §§ 24-72-200.1 to -206 (“CORA”). The District, not Clever, shall respond to all parent/guardian and eligible student requests to inspect and review records, data and other information.

5. School Service Contract Provider. If Clever is a “school service contract provider” under the Colorado Student Data Transparency and Security Act (the “Act”), the Contract is amended to add the language in this section 5. Under the Act, a “school service contract provider” is defined as an entity (other than the Colorado Department of Education, a K-12 public education entity or an institution of higher education) that enters into a formal, negotiated contract with the District to provide a “school service.” Under the Act, a “school service” is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses confidential student records and information. If and to the extent that Clever is a school service contract provider, Clever shall comply with the Act in all particulars and, in the event that any provision hereof conflicts with the Act, the Act shall control.

5.1 The Clever SFTP Instructions dated July 17, 2018, attached hereto and incorporated herein, contains: (a) the data elements of confidential student records and information that Clever collects under the Contract, regardless of whether the data elements are initially collected or ultimately held individually or in the aggregate using protocols that are effective for preserving the anonymity of each student included in the data; (b) the learning purpose for which Clever collects the confidential student records and information; and (c) how Clever uses and shares the confidential student records and information. Upon District’s written request, Clever shall update this information as necessary to maintain accuracy.

5.2 Clever shall facilitate the District’s access to and correction of any factually inaccurate confidential student records and information as required in response to correction requests from parents/guardians and eligible students.

6. Remedies. If Clever fails to comply with any of the foregoing requirements at any time during or after the term of the Contract the District may, as applicable, terminate the Contract and/or disqualify Clever from future contracts with the District.

IN WITNESS WHEREOF, Clever and the District have signed this Addendum as of the dates set forth below.

Clever 

By: Carolyn Ajnassian, Director of District Success
[Name and Title]

Date: 8/20/18

PLATTE VALLEY SCHOOLS;
(WELD COUNTY SCHOOL DISTRICT NO. RE-7)

By: Mike Jakel, Director of Technology
[Name and Title]

Date: 8/21/2018

