CLEVER, INC., AND "FAIRPORT CENTRAL SCHOOL DISTRICT"

AFFILIATION AGREEMENT

AGREEMENT made as of August __, 2020 by, between, and among Clever, Inc., having its offices at 1263 Mission Street, San Francisco, California 94103, (hereinafter referred to as "Clever") and FAIRPORT CENTRAL SCHOOL DISTRICT 38 W. Church St., Fairport, NY 14450] (hereinafter referred to as "FAIRPORT CENTRAL SCHOOL DISTRICT"). Clever enters this Agreement as an independent contractor and will remain as an independent contractor throughout the term of this agreement. Clever employees shall not be entitled to any rights, payments or benefits afforded to FAIRPORT CENTRAL SCHOOL DISTRICT employees.

1. Scope. Clever and FAIRPORT CENTRAL SCHOOL DISTRICT enter into affiliation solely for the purpose of offering Clever's data integration and single sign-on functionality services. School districts will be able to select services that they receive based on their individual district's needs.

2. Terms and Termination. This Agreement shall begin on July 1, 2020 and terminate at June 30, 2021; however, either of the parties may terminate this Agreement at any time and for any reason upon sixty (60) days' prior written notice to the other party.

3. Renewal. The parties may renew this Agreement by written mutual agreement sixty (60) days' prior to the end of the term.

4. Fees. There shall be no fees charged to FAIRPORT CENTRAL SCHOOL DISTRICT by Clever pursuant to this Agreement or otherwise, absent a separate written document signed by the parties agreeing to any such fees for additional services.

5. Indemnification. Each party agrees to indemnify and hold each other and each of their officers, directors, employees agents and assigns, harmless from and against all claims, causes of action, damages, liabilities, fines, costs and expenses (including reasonable attorneys' fees) that may arise from the violation of the terms of this Agreement, violation of any applicable laws, infringement of third party proprietary and/or intellectual property rights, libel, slander and other torts including with respect to personal injury, property damage and death arising from the negligent or willfully wrongful acts or omissions of its employees, third-party vendors, contractors, subcontractors or agents, in connection with the services provided in connection with this Agreement.

6. Cooperation. The parties agree to cooperate with each other in connection with any internal investigations by Clever or FAIRPORT CENTRAL SCHOOL DISTRICT of possible violation of their respective policies and procedures and any third party litigation.

7. Confidentiality. Clever agrees that any and all data obtained from FAIRPORT CENTRAL SCHOOL DISTRICT shall be used expressly and solely for the purposes enumerated in this Agreement. FAIRPORT CENTRAL SCHOOL DISTRICT data shall not be distributed, used, or shared for any other purpose. Clever shall not sell, transfer, share or process any FAIRPORT CENTRAL SCHOOL DISTRICT data for any purpose other than those under this Agreement, including commercial advertising, marketing, or any other commercial purpose. Clever will comply with the terms and conditions set forth in the Education Law Section 2-d Contract Addendum, which is attached hereto as **Appendix A** and is incorporated by reference as if fully set forth herein. Clever shall comply with all applicable laws, including, but not

limited to verify compliance with the Family Educational Rights and Privacy Act and New York Education Law Section 2-d.

8. Independent Contractor: This Agreement does not create an employee/employer relationship between the parties. Clever will be an independent contractor and not a FAIRPORT CENTRAL SCHOOL DISTRICT employee for any purpose whatsoever. No clever employee shall be entitled to any payment or benefit from FAIRPORT CENTRAL SCHOOL DISTRICT

9. Non-Discrimination and Legal Compliance. Clever agrees that it will not discriminate against anyone with respect to the provision of services hereunder on the grounds of race, religion, creed, color, national origin, gender, sexual orientation, disability, marital status, veteran status or other protected category. In providing the services pursuant to this Agreement, Clever will comply with all applicable laws, rules and regulations.

11. Jurisdiction. This Agreement shall be governed by the laws of the State of New York. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of Monroe, New York.

12. Insurance. Each party hereby agrees to obtain and thereafter maintain in full force and effect during the term of this Agreement general liability insurance with limits not less than $1,000,000 per occurrence and $2,000,000 annual aggregate.

13. **Order of Interpretation and Control.** In the event of a conflict between this Agreement, any Terms of Use document, the Education Law Section 2-d Contract Addendum (Appendix A), or any other documents, the Education Law Section 2-d Contract Addendum (Appendix A) shall control, then the Agreement, then any other appendices, as each may be applicable to each party herein. Clever shall not include any term in any such form or format that contradicts the terms to which it has agreed in this Agreement or Education Law Section 2-d.

14. **Notices**. All notices to Clever and FAIRPORT CENTRAL SCHOOL DISTRICT in connection with this Agreement shall be sent to:

Legal-Notices@clever.com

Kevin Laughlin, CFO

All notices to FAIRPORT CENTRAL SCHOOL DISTRICT in connection with this Agreement shall be sent to:

Data Protection Officer, Fairport School District, 140 Hulburt Rd. Fairport NY, 14450.

15. **Entire Agreement**. This Agreement, Appendix A and the applicable Terms of Use and privacy policies constitute the entire agreement between the parties.

[*signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Clever, Inc.

Signature: _____

Name: _Kevin Laughlin_____

Title: __CFO _____

Date: _____

<mark>FAIRPORT CENTRAL SCHOOL DISTRICT</mark>

Signature: _____

Name: _____

Title: _____

Date: _____

Appendix A
Compliance With New York State Education Law Section 2-d Addendum ("Addendum")

The parties to this Agreement are the <mark>FAIRPORT CENTRAL SCHOOL DISTRICT</mark> and Clever, Inc. ("Vendor"). <mark>FAIRPORT CENTRAL SCHOOL DISTRICT</mark> is an educational agency, as that term is used in Section 2-d of the New York State Education Law ("Section 2-d") and its implementing regulations, and Vendor is a third party contractor, as that term is used in Section 2-d and its implementing regulations. <mark>FAIRPORT CENTRAL SCHOOL DISTRICT</mark> and Vendor have entered into this Agreement to conform to the requirements of Section 2-d and its implementing regulations. To the extent that any term of any other agreement or document conflicts with the terms of this Agreement, the terms of this Agreement shall apply and be given effect.

Definitions
As used in this Agreement and related documents, the following terms shall have the following meanings:

"Student Data" means personally identifiable information from student records that Vendor receives from an educational agency in connection with providing Services under this Agreement.

"Personally Identifiable Information" ("PII") as applied to Student Data, means personally identifiable information as defined in 34 CFR 99.3 implementing the Family Educational Rights and Privacy Act (FERPA), at 20 USC 1232g.

"Third Party Contractor," "Contractor" or "Vendor" means any person or entity, other than an educational agency, that receives Student Data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency, including, but not limited to data management or storage services, conducting studies for or on behalf of such educational agency, or audit or evaluation of publicly funded programs.

"Parent" means a parent, legal guardian, or person in parental relation to a student.

"Student" means any person attending or seeking to enroll in an educational agency.

"Eligible Student" means a student eighteen years or older.

"State-protected Data" means Student Data, as applicable to Vendor's product/service.

"Breach" means the unauthorized access, use, or disclosure of personally identifiable information.

"Commercial or marketing purpose" means the sale of PII; and the direct or indirect use or disclosure of State-protected Data to derive a profit, advertise, or develop, improve, or market products or services to students other than as may be expressly authorized by the parties in writing (the "Services").

"Disclose", "Disclosure," and "Release" mean to intentionally or unintentionally permit access to State-protected Data; and to intentionally or unintentionally release, transfer, or otherwise communicate State-protected Data to someone not authorized by contract, consent, or law to receive that State-protected Data.

Vendor Obligations and Agreements

Vendor agrees that it shall comply with the following obligations with respect to any student data received in connection with providing Services under this Agreement and any failure to fulfill one of these statutory or regulatory obligations shall be a breach of this Agreement. Vendor shall:

      (a)   limit internal access to education records only to those employees and subcontractors that are determined to have legitimate educational interests in accessing the data within the meaning of Section

2-d, its implementing regulations and FERPA (e.g., the individual needs access in order to fulfill his/her responsibilities in providing the contracted services);

(b)   only use personally identifiable information for the explicit purpose authorized by the Agreement, and must/will not use it for any purpose other than that explicitly authorized in the Agreement or by the parties in writing;

(c)   not disclose any personally identifiable information received from BOCES or a Participating School District to any other party who is not an authorized representative of the Vendor using the information to carry out Vendor's obligations under this Agreement, unless (i) if student PII, the Vendor or that other party has obtained the prior written consent of the parent or eligible student, or (ii) the disclosure is required by statute or court order, and notice of the disclosure is provided to the source of the information no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order;

(d)   maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the personally identifiable information in its custody;

(e)   use encryption technology to protect data while in motion or in its custody (i.e., in rest) from unauthorized disclosure by rendering personally identifiable information unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified or permitted by the Secretary of the United States department of health and human services in guidance issued under Section 13402(H)(2) of Public Law 111-5 using a technology or methodology specified or permitted by the secretary of the U S.);

(f)   not sell personally identifiable information received from BOCES or a Participating School District nor use or disclose it for any marketing or commercial purpose unless otherwise expressly authorized by the Services, or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so;

(g)   notify the educational agency from which student data is received of any breach of security resulting in an unauthorized release of such data by Vendor or its assignees in violation of state or federal law, or of contractual obligations relating to data privacy and security in the most expedient way possible and without unreasonable delay, in compliance with New York law and regulation;

(h)   reasonably cooperate with educational agencies and law enforcement to protect the integrity of investigations into any breach or unauthorized release of personally identifiable information by Vendor;

(i)   adopt technologies, safeguards, and practices that align with the NIST Cybersecurity Framework, Version 1.1, that are in substantial compliance with the BOCES data security and privacy policy, and that comply with Education Law Section 2-d, Part 121 of the Regulations of the Commissioner of Education and the Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security, set forth below, as well as all applicable federal, state and local laws, rules and regulations;

(j)   acknowledge and hereby agrees that the State-protected Data which Vendor receives or has access to pursuant to this Agreement may originate from several Participating School Districts located across New York State. Vendor acknowledges that the State-protected Data belongs to and is owned by the Participating School District or student from which it originates;

(k)   acknowledge and hereby agrees that if Vendor has an online terms of service and/or Privacy Policy that may be applicable to its customers or users of its product/service, to the extent that any term of such online terms of service or Privacy Policy conflicts with applicable law or regulation, the terms of the applicable law or regulation shall apply;

(l) acknowledge and hereby agrees that Vendor shall promptly pay for or reimburse the educational agency for the full third party cost of a legally required breach notification to parents and eligible students due to the unauthorized release of student data caused by Vendor or its agent or assignee;

(m) ensure that employees, assignees and agents of Contractor who have access to student data, or teacher or principal data receive or will receive training on the federal and state laws governing confidentiality of such data prior to receiving access to such data; and

(n) ensure that any subcontractor that performs Contractor's obligations pursuant to the Agreement is legally bound by legally compliant data protection obligations imposed on the Contractor by law, the Agreement and this Agreement.

<mark>FAIRPORT CENTRAL SCHOOL DISTRICT</mark> Parents' Bill of Rights for Data Privacy and Security

The Fairport School District is committed to protecting the privacy and security of student data and teacher and principal data. In accordance with New York Education Law Section 2-d and its implementing regulations, the District informs the school community of the following:

1. A student's personally identifiable information cannot be sold or released for any commercial purposes.
2. Parents have the right to inspect and review the complete contents of their child's education record.
3. State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to encryption, firewalls, and password protection, must be in place when data is stored or transferred.
4. A complete list of all student data elements collected by New York State is available for public review at the following website http://www.nysed.gov/student-dataprivacy/student-data-inventory or by writing to the Office of Information and Reporting Services, New York State Education Department, Room 865 EBA, 89 Washington Avenue, Albany, New York 12234.
5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to Privacy Complaint, Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website http://www.nysed.gov/student-data-privacy/form/reportimproper-disclosure. Complaints may also be submitted to the District's Data Protection Officer by writing to: Data Protection Officer, Fairport School District, 140 Hulburt Rd. Fairport NY, 14450.

Supplemental Information About Agreement Between Clever, Inc. and ==FAIRPORT CENTRAL SCHOOL DISTRICT==

(a)	The exclusive purposes for which the personally identifiable information provided by ==FAIRPORT CENTRAL SCHOOL DISTRICT== will be used by Vendor is to provide data integration and single sign-on functionality services to ==FAIRPORT CENTRAL SCHOOL DISTRICT== pursuant to a BOCES Purchase Order.

(b)	Personally identifiable information received by Vendor, or by any assignee of Vendor, from BOCES or from a Participating School District shall not be sold or used for marketing purposes.

(c)	Personally identifiable information received by Vendor, or by any assignee of Vendor shall not be shared with a sub-contractor except pursuant to a written contract that binds such a party to at least the same data protection and security requirements imposed on Vendor under this Agreement, as well as all applicable state and federal laws and regulations.

(d)	The effective date of this Agreement shall be immediately and the Agreement shall remain in effect until June 30, 2021, unless sooner by either party for any reason upon sixty (60) days' notice.

(e)	Upon expiration or termination of the Agreement without a successor or renewal agreement in place, and upon request from ==FAIRPORT CENTRAL SCHOOL DISTRICT==, Vendor shall transfer all educational agency data to the educational agency in a format agreed upon by the parties. Vendor shall thereafter securely delete all educational agency data remaining in the possession of Vendor or its assignees or subcontractors (including all hard copies, archived copies, electronic versions or electronic imaging of hard copies) as well as any and all educational agency data maintained on behalf of Vendor in secure data center facilities, other than any data that Vendor is required to maintain pursuant to law, regulation or audit requirements. Vendor shall ensure that no copy, summary or extract of the educational agency data or any related work papers are retained on any storage medium whatsoever by Vendor, its subcontractors or assignees, or the secure data center facilities unless Vendor is required to keep such data for legal, regulator, or audit purposes, in which case the data will be retained in compliance with the terms of this Agreement. To the extent that Vendor and/or its subcontractors or assignees may continue to be in possession of any de-identified data (data that has had all direct and indirect identifiers permanently removed with no possibility of reidentification), they each agree not to attempt to re-identify de-identified data and not to transfer de-identified data to any party. Upon request, Vendor and/or its subcontractors or assignees will provide a certification to the BOCES or Participating School District from an appropriate officer that the requirements of this paragraph have been satisfied in full.

(f)	State and federal laws require educational agencies to establish processes for a parent or eligible student to challenge the accuracy of their student data. Third party contractors must cooperate with educational agencies in complying with the law. If a parent or eligible student submits a challenge to the accuracy of student data to the student's district of enrollment and the challenge is upheld, Vendor will cooperate with the educational agency to amend such data.

(g)	Vendor shall store and maintain PII in electronic format on systems maintained by Vendor in a secure data center facility in the United States in accordance with its Privacy Policy, NIST Cybersecurity Framework, Version 1.1, and the BOCES data security and privacy policy, Education Law Section 2-d, Part 121 of the Regulations of the Commissioner of Education, and the Monroe #1 BOCES Parents' Bill of Rights for Data Privacy and Security, set forth above. Encryption technology will be utilized while data is in motion and at rest, as detailed above.