

6/16/2023

Lexia Learning Systems LLC  
Attn: Nick Gaehde, President  
300 Baker Ave STE 320  
Concord, MA 01742-2131

Reference: 1Government Procurement Alliance (1GPA), Contract 23-13P-20

Dear Mr. Gaehde:

**Acceptance Agreement**

**Contract Number: 4400011861**

This acceptance agreement signifies a contract award to Lexia Learning Systems LLC for Instructional Aids and Materials. The period of the contract shall be from date of award through March 12, 2024. There are four (4) one-year renewal options.

The contract award shall be in accordance with:

1. This Acceptance Agreement;
2. The attached Fairfax County Public Schools contract 4400011861;
3. The Prices, Terms and Conditions of 1Government Procurement Alliance (1GPA), Contract 23-13P-20;

Please note that this is not an order to proceed. A purchase order, which constitutes your notice to proceed, will be issued to your firm. Please provide your Insurance Certificate according to Special Provisions Paragraph 17 within two (2) days after receipt of this letter. Contract award documents may be viewed on the Fairfax County, Department of Purchasing and Supply Management website at: [www.fairfaxcounty.gov/dpsm/contracts.htm](http://www.fairfaxcounty.gov/dpsm/contracts.htm).

Sincerely,



Michelle R. Pratt  
Director

MRP/ap

**Contract Number 4400011861**

THE PARTIES TO THIS CONTRACT, Fairfax County Public Schools ("FCPS", "FAIRFAX COUNTY", or "the County") AND Lexia Learning Systems LLC. ("CONTRACTOR") MUTUALLY AGREE THAT:

1. FCPS engages the CONTRACTOR to provide the following goods and/or services:
  - 1.1. The Contractor shall provide instructional aids and materials on an as-needed basis in accordance with 1Government Procurement Alliance (1GPA), Contract 23-13P-20. Lexia Learning Systems pricing schedule is reflected in Attachment A.
2. PERIOD OF CONTRACT:
  - 2.1. The period of this contract shall be from the date of award through March 12, 2024.
  - 2.2. Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term by agreement of both parties. Contract renewals must be authorized by and coordinated through the Office of Procurement Services. FCPS reserves the right to renew the contract for four (4) additional one-year periods.
  - 2.3. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this Invitation for Bid is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.
3. COMPENSATION:
  - 3.1. FCPS agrees to pay the Contractor for goods/services provided in accordance with 1GPA Contract 23-13P-20 and as described in the Lexia Learning Systems pricing scheduled (Attachment A). As the Contractor is not a-bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the Contractor.
4. AUTHORITY:
  - 4.1. The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by Fairfax County. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of Fairfax County for indebtedness. Any purchase ordered or contract made which is contrary to these provisions

and authorities shall be of no effect and void and shall not be binding on the County.

5. DEFINITIONS:

- 5.1. All terms used in this agreement are defined in the Fairfax County Purchasing Resolution, Article 1, Section 6 and shall be used in accordance with such definitions.

6. INTERPRETATION OF CONTRACT:

- 6.1. Any questions pertaining to this contract shall be directed to:

Aubree Parker, Sr. Contract Specialist  
Fairfax County Public Schools  
Office of Procurement Services  
8115 Gatehouse Road, Suite 4400  
Falls Church, Virginia 22042-1203  
Telephone: 571-423-3580  
Email: [adparker2@fcps.edu](mailto:adparker2@fcps.edu)

7. METHOD OF ORDERING:

- 7.1. As requirements arise, authorized individuals will place orders for specific quantities of items covered herein. Regardless of the method of ordering used, the contract and any subsequent modifications determine performance time and dates. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed.
- 7.2. The County may place orders from this Contract by Purchase Orders (PO) confirming an applicable Lexia quote. . The method of payment is at the discretion of the County at no additional surcharges will be accepted for the use of the procurement card.
- 7.3. A Purchase Order may be issued to the contractor on behalf of the County agency ordering the items/services covered under this contract. Purchase Orders submitted in response to each Lexia quote should reference this Contract and include the correct serial number as provided on the applicable quote. All Purchase Orders will be processed under the terms of this Contract, 1GPA and those of the applicable Lexia quote and license only; any terms contained in any individual Purchase Order that are in addition to or inconsistent with the foregoing shall be null and of no effect. All orders are subject to Lexia's review and acceptance.
- 7.4. Credit card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently under contract with JP Morgan Chase/Master Card. For clarity and notwithstanding anything to the contrary, payments for orders under the Agreement will be accepted by check or electronic funds transfer only, provided however, that, at the sole discretion of and upon prior written approval by Lexia, District-issued payment card/credit card transactions of up to \$100,000 may be accepted, on a case-by-case and exception basis.

8. CANCELLATION OF ORDERS:

- 8.1. Purchases made under this contract are for readily available services and supplies; time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order

and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this contract. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

9. NEW GOODS, FRESH STOCK:

- 9.1. All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

10. INSPECTION AND ACCEPTANCE:

- 10.1. For determining acceptance of supplies or services for the purpose of eligibility for a prompt payment discount, inspection and acceptance shall be accomplished only after examination (including testing) to determine conformance with the contract requirements. Inspection, as appropriate, shall be accomplished within a reasonable time.
- 10.2. Inspection and acceptance of materials or supplies will be made after delivery at specified destinations unless otherwise stated. The County will bear the expense of inspection except for the value of samples used in case of rejection. Inspection and acceptance or rejection of the materials or supplies will be made in a reasonable time, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

11. PACKING LIST /DELIVERY TICKETS:

- 11.1. A packing list or delivery ticket must be furnished with each shipment indicating the Purchase Order number, vendor name, item description, quantity ordered, and quantity shipped.

12. INVOICING PROCEDURE:

- 12.1. The Contractor shall submit an invoice for each Purchase Order and submit to the BILL TO address shown on the order. The invoice shall contain the applicable Purchase Order number, BP (call order number), and the name of the department receiving the supplies or services.

13. PAYMENT:

- 13.1. Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and thirty (30) days after upon receipt of a properly completed invoice, subject to contract requirements. Fairfax County reserves the right to withhold any or all payments or portions due to Contractor's failure to perform in accordance with the provision of the contract, including failure of goods delivered to satisfactorily pass inspection or acceptance testing. For clarity: For orders of LETRS® program offerings, the total fees for the LETRS subscription licenses, the associated text/supporting materials, and any District Support Partnership (DSP) or other support services included in the applicable order, will be invoiced to the District in full upon Lexia's receipt of the applicable-PO or other confirmation of the order quote from the District, payable net thirty (30) days from invoice receipt, and the fees for live group training sessions that are included with the LETRS offering will be invoiced monthly in arrears for each LETRS group training session held by Lexia in the previous month. For orders of Lexia® SaaS-based subscription licenses and associated services, including any District Support Partnership (DSP) or other support services included in the applicable order, the total

fees for all subscriptions and services under the applicable order quote will be invoiced to the District in full upon Lexia's receipt of the applicable PO or other confirmation of the order quote from the District, payable net thirty (30) days from invoice receipt. Notwithstanding anything to the contrary, unless otherwise expressly required under applicable law or in the event of an uncured material default by Lexia, invoiced fees are not subject to offset, credit or reimbursement for termination prior to the end of the then-current license subscription period.

13.2. Unless otherwise stated in the contract, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent of the value of the entire order may be retained until completion of contract.

13.3. For equipment, payment of the contract price may be paid after such equipment is delivered on the site, installed (if installation is required), and tested and found to be satisfactory and, further, subject to the requirements of Section 13.

14. SHIPPING:

14.1. All materials shipped to the County must be shipped F.O.B. destination unless otherwise stated in a subsequent purchase order. The materials must be delivered to the "ship to" address indicated on the purchase order. Fairfax County shall not pay transportation charges unless the contractor received prior approval from the Purchasing Agent.

15. AUDIT RECORDS:

15.1. The Contractor shall maintain adequate copies of books, records, vouchers, and records of treatment in such a manner that they may be audited in progress and upon three years following completion of the contract. The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make such records available to Fairfax County for a period of three (3) years thereafter.

16. TAX EXEMPTION:

16.1. Fairfax County Public Schools is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. The Federal Excise Tax Number is 003018644. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling 571-423-3743.

17. CONTRACT INSURANCE PROVISIONS:

17.1. The Contractor shall be responsible for its work and all materials, tools, equipment, appliances, and property of any and all description used in connection with this contract. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.

17.2. The Contractor shall, during the continuance of all work under the contract maintain the following insurance:

a. Statutory Workers' Compensation and Employer's Liability with limits of at least \$100,000.

- b. Commercial General Liability insurance with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate including contractual liability, personal and advertising injury, and products, completed operations coverage.
  - c. Cyber/Information Technology insurance in the amount of \$1,000,000 per occurrence and annual aggregate, including coverage for costs of third party notification, credit monitoring, and fraud protection.
- 17.3. Fairfax County Public Schools, the Fairfax County School Board, its officers, and employees shall be named as an additional insured in the Automobile and General Liability policies.
- 17.4. Additional Requirements
- a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
  - b. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
  - c. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
  - d. Prior to commencement of services and during the term of the contract. the contractor will provide a signed Certificate of Insurance citing the contract number and such coverage as required by this section.
  - e. The contractor will either cover the actions of its subcontractors under contractor's own insurance coverage or secure and maintain all insurance certificates of its subcontractors, if any, which shall be made available to FCPS on demand.

18. INDEMNIFICATION:

- 18.1. The contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the contractor shall, at his or her own expense, satisfy and discharge the same. The contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

19. CONTRACT ALTERATIONS:

- 19.1. No alterations in the terms of the contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent. Should it become proper or necessary in the execution of this contract to make any change in design or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment.
- 19.2. No payment shall be made to the contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.
- 19.3. The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

20. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:

- 20.1. The contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the contractor desires to assign his or her right to payment of the contract, contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

21. TERMINATION FOR CONVENIENCE:

- 21.1. The contract will remain in force for the full period specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and until all requirements and conditions shall have been met, unless:
  - a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
  - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
- 21.2. The contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery of a Notice of Termination to the Contractor at least five working days prior to the termination date specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

22. TERMINATION OF CONTRACT FOR CAUSE:

- 22.1. If, through any cause, the Contractor fails to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- 22.2. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
23. GUARANTIES & WARRANTIES:
- 23.1. All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless in conflict with this contract or as otherwise stated, manufacturer's standard warranty applies.
24. GENERAL GUARANTY:
- 24.1. Contractor agrees to:
- a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
  - b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
  - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
  - d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
  - e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.
25. SERVICE CONTRACT GUARANTY:
- 25.1. Contractor agrees to:
- a. Furnish services described in the contract at the times and places and in the manner and subject to conditions set forth provided that the County may reduce the said services at any time.

- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material.

26. OFFICIALS NOT TO BENEFIT:

- 26.1. Upon acceptance of this contract, the Contractor certifies that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract in accordance with the Fairfax County Purchasing Resolution Article 2, Section 4.A.3.

27. LICENSE REQUIREMENT:

- 27.1. All firms doing business in Fairfax County shall obtain a license as required by Chapter 4, Article 7.2, of The Code of the Fairfax County, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration [http://www.fairfaxcounty.gov/dta/business\\_bpole.htm](http://www.fairfaxcounty.gov/dta/business_bpole.htm) or by telephone (703) 222-8234.

28. REGISTERING OF CORPORATIONS:

- 28.1. In accordance with Virginia Code Section 13.1-758, any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, as amended, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209.

29. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:

- 29.1. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with Fairfax County pursuant

to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

30. COVENANT AGAINST CONTINGENT FEES:

- 30.1. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

31. VENDOR RELATIONS DIVISION:

- 31.1. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation. PLEASE COMPLETE THE ATTACHED BUSINESS CLASSIFICATION SCHEDULE.
- 31.2. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

32. INELIGIBILITY:

- 32.1. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 4, Section 1 of the Fairfax County Purchasing Resolution.

33. ORDER OF PRECEDENCE:

- 33.1. In the event of conflict, the provisions of this contract shall take precedence over any other contract document.

34. DELAYS AND SUSPENSIONS:

- 34.1. The County may direct the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time deemed appropriate for the convenience of the County. The County will extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of

performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

34.2. If the County does not direct the Contractor, in writing, to suspend, delay, or interrupt the contract, the Contractor must give the County Purchasing Agent written notice if Fairfax County fails to provide data or services that are required for contract completion by the Contractor. The County may extend the Contractor's time of completion by a period of time that in the discretion of the Purchasing Agent is reasonably suited for completion of work. The County may further amend the contract by mutual agreement for any increase in the cost of performance of the contract (excluding profit) resulting solely from the delay or suspension of the contract. No adjustment shall be made under this clause for any delay or interruption resulting from any other cause, including the fault or negligence of the Contractor.

34.3. The Contractor shall continue its work on other phases of the project or contract, if in the sole discretion of the Purchasing Agent such work is not impacted by the County's delay, suspension, or interruption. All changes to the work plan or project milestones shall be reflected in writing as a contract amendment.

35. CONTRACTUAL DISPUTES:

35.1. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within ninety (90) days, in accordance with Article 4, Section 5 of the Fairfax County Purchasing Resolution, as amended.

36. COMPLIANCE WITH FEDERAL, STATE, AND COUNTY LAWS:

36.1. The Contractor will comply with all applicable federal and state laws and with all County ordinances and requirements.

37. HIPAA COMPLIANCE:

37.1. Fairfax County Government has designated certain health care components as covered by the federal Health Insurance Portability and Accountability Act of 1996. The contractor may be designated by the Purchasing Agent as a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. If so designated, the contractor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The contractor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Further information regarding HIPAA compliance is available on the County's website at <http://www.fairfaxcounty.gov/hipaa/default.asp>.

38. NON-DISCRIMINATION:

38.1. During the performance of this contract, the Contractor will not discriminate against any

employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor, in accordance with Article 2, Section 4.C of the Fairfax County Purchasing Resolution, as amended.

39. DRUG FREE WORKPLACE:

39.1. During the performance of this contract, the contractor agrees to provide a drug-free workplace for the contractor's employees in accordance with Article 2, Section 4, B.6 of the Fairfax County Purchasing Resolution, as amended.

40. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

40.1. Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Acceptance of this contract by the Contractor acknowledges the Contractor's commitment and compliance with ADA.

41. VENUE:

41.1. This contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the state courts of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.

42. IMMIGRATION REFORM AND CONTROL ACT:

42.1. Contractor certifies that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

43. BACKGROUND CRIMINAL INVESTIGATION/IDENTIFICATION:

43.1. By the signature of its authorized official on this contract, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Contractor agrees to remove from the contract any employee, agent or subcontractor who has been determined by the School Board to be disqualified from service due to such convictions or the failure to truthfully report such convictions.

43.2. The Contractor shall immediately notify the FCPS contract administrator if any Contractor or employee of said Contractor providing services under the contract is arrested or indicted as a

defendant in Virginia or any other jurisdiction. FCPS reserves the right to require that the employee be suspended from working on the contract until the charge(s) is adjudicated. This requirement does not apply to minor traffic violations, not requiring the appearance of the employee in court, unless the charge includes the illegal possession, distribution, use or influence of drugs or alcohol.

43.3. Due to enhanced security measures, Contractor employees/representatives are required to have photo identification and be able to present same upon request. Contractor employees/representatives shall report to the appropriate administrative and/or main office each time a site is visited. All contractors will be required to wear a company picture ID badge, or temporary name tag, issued by the County, clearly visible above the waist. Contractor employees/representatives who arrive at the County/School facility without appropriate identification badges will immediately be dismissed from the job site.

43.4. Failure to comply with the above requirements may result in termination of the contract.

44. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

44.1. Pursuant to Code of Virginia, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

SCC Identification Number: T0571762

ACCEPTED BY:



Nick Gaehde, President  
Lexia Learning Systems LLC

12-Jun-2023  
DATE



Colleen Eddy, Director IV  
Department of Special Services

6/12/23  
DATE



Michelle R. Pratt, Director  
Office of Procurement Services

6/16/2023  
DATE

BUSINESS CLASSIFICATION SCHEDULE

**DEFINITIONS**

**Small Business/Organization** – is an independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years..

**Minority Business** – is a business concern that is at least **51%** owned by one or more minority individuals or in the case of a corporation, partnership or limited liability company, or other entity, at least **51%** of the equity ownership interest in the corporation, partnership or limited company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals. Such individuals shall include Asian American, African American, Hispanic American, Native America, Eskimo or Aleut.

**Woman-Owned Business** – A business concern that is at least **51%** owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited company or other entity, at least **51%** of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

**YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING ONE (1) OF THE SIX (6) BOXES IN THE CHART BELOW.** This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc.

**Examples:**

A small business, Asian woman owned, would mark box C on line 2.

A large business, African-American owned, would mark box V on line 3.

A small non-profit would mark box B on line 1.

A large business, publicly traded on NYSE or NASDAQ, would mark box Y on line 1.

Line	SMALL BUSINESS	LARGE BUSINESS	OWNERSHIP
1	___ B	___ Y	Regardless of Ownership
2	___ C	___ A	Women-Owned
3	___ X	___ V	Minority-Owned

NAME OF FIRM: \_\_\_\_\_

### ATTACHMENT A PRICING SCHEDULE

2023 PRICING						
<b>Lexia English Language Development</b>						
<b>LEXIA ENGLISH STUDENT SUBSCRIPTION</b> <small>(Including renewal products)</small>						
	1 year	2 years	3 years	4 years	5 years	
1-249		\$100.00	\$184.80	\$255.60	\$340.80	\$426.00
250-499		\$95.00	\$175.50	\$243.00	\$324.00	\$405.00
500+		\$90.00	\$166.80	\$228.50	\$306.00	\$382.50
<b>LEXIA ENGLISH UNLIMITED SCHOOL SUBSCRIPTION</b> <small>(Including renewal products)</small>						
	1 year	2 years	3 years	4 years	5 years	
		\$12,900	\$24,240	\$34,830	\$46,440	\$58,050
<b>LEXIA ENGLISH UNLIMITED SCHOOL SUBSCRIPTION with SCHOOL SUCCESS PARTNERSHIP</b> <small>(Including renewal products)</small>						
	1 year	2 years	3 years	4 years	5 years	
		\$14,900	\$28,020	\$40,230	\$53,640	\$67,050
<b>Lexia English Language Development Term/Hosting</b>						
	Student	Term Price Per Student	Annual Hosting \$/ Student	Total Cost over Term length		
3 Year term		\$141.00	\$30.00	\$231.00		
5 Year term		\$235.00	\$30.00	\$325.00		
	Site	Term Price Per Site	Annual Hosting \$/ Site	Total Cost over Term length		
3 Year term		\$21,600	\$9,583	\$32,349		
5 Year term		\$36,000	\$9,583	\$53,515		
<b>Individual Partnership Offerings</b>						
		Cost	Timeframe			
Lexia English Language Development Pilot		\$2,000	Up to 6 Months			
Lexia English Language Development District Success Partnership Pilot		\$2,000	Up to 6 Months			
Lexia English Language Development School Success Partnership (Per Site)		\$4,000	Annual			
Lexia English Language Development Professional Learning Day - Full Day		\$4,250	Full Day			
Lexia English Language Development Live Online		\$1,000	One Time			
Lexia English Language Development District Success Partnership - Bronze		\$4,000	Annual			
Lexia English Language Development District Success Partnership - Silver		\$8,300	Annual			
Lexia English Language Development District Success Partnership - Gold		\$11,900	Annual			
Lexia English Language Development District Success Partnership - Platinum		\$16,100	Annual			
District Success Manager		\$194,000	Annual			

2023 PRICING				
LETRS (Language Essentials for Teachers of Reading and Spelling)				
	Version	Catalog Number	13-Digit ISBN	2023 Price
LETRS Bundles				
LETRS Participant Materials Bundle (Print + License) - Early Childhood / 1 participants - 1 Year	Early Childhood	354693	9781491630426	\$250.00
LETRS Participant Materials Bundle (Print + License) - Early Childhood / 40 participants - 1 Year	Early Childhood	354693	9781491630426	\$10,000.00
LETRS Participant Materials Bundle (Print + License) with 2 Face-to-Face Professional Learning Sessions - Early Childhood / 40 Participants - 1 Year	Early Childhood	382432	9798765300008	\$21,000.00
LETRS Participant Materials Bundle (Print + License) with 4 Live Online Professional Learning Sessions - Early Childhood / 40 Participants - 1 Year	Early Childhood	382441	9798765300015	\$17,200.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 1-4 / 1 Participant - 1 Year	3rd Edition	354061	9781491609620	\$399.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 1-4 / 40 Participants - 1 Year	3rd Edition	354061	9781491609620	\$15,960.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 5-8 / 1 Participant - 1 Year	3rd Edition	354079	9781491609668	\$399.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 5-8 / 40 Participants - 1 Year	3rd Edition	354079	9781491609668	\$15,960.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 1-8 / 1 Participant - 2 Years	3rd Edition	354087	9781491609705	\$798.00
LETRS Participant Materials Bundle (Print + License) - 3rd Edition Units 1-8 / 40 Participants - 2 Years	3rd Edition	354087	9781491609705	\$31,920.00
LETRS Participant Materials Bundle (Print + License) with 4 Face-to-Face Professional Learning Sessions - 3rd Edition Units 1-4 / 40 Participants - 1 Year	3rd Edition	382467	9798765300039	\$17,960.00
LETRS Participant Materials Bundle (Print + License) with 6 Live Online Professional Learning Sessions - 3rd Edition Units 1-4 / 40 Participants - 1 Year	3rd Edition	382459	9781491629994	\$30,360.00
LETRS Participant Materials Bundle (Print + License) with 4 Face-to-Face Professional Learning Sessions - 3rd Edition Units 5-8 / 40 Participants - 1 Year	3rd Edition	382483	9798765300053	\$17,960.00
LETRS Participant Materials Bundle (Print + License) with 6 Live Online Professional Learning Sessions - 3rd Edition Units 5-8 / 40 Participants - 1 Year	3rd Edition	382475	9798765300046	\$30,360.00
LETRS Participant Materials Bundle (Print + License) with 8 Face-to-Face Professional Learning Sessions - 3rd Edition Units 1-8 / 40 Participants - 2 Years	3rd Edition	382491	9798765300060	\$75,920.00
LETRS Participant Materials Bundle (Print + License) with 16 Live Online Professional Learning Sessions - 3rd Edition Units 1-8 / 40 Participants - 2 Years	3rd Edition	382504	9798765300077	\$60,720.00
LETRS Participant Materials Bundle (Print + License) with Blended 4 Face-to-Face/ 6 Live Online Professional Learning Sessions - 3rd Edition Units 1-8 / 40 Participants - 2 Years	3rd Edition	382512	9788765300084	\$68,320.00
LETRS Participant Materials Bundle (Print + License) - Administrators / 1 participant - 2 Year	LETRS for Administrators	354706	9781491630440	\$250.00
LETRS Participant Materials Bundle (Print + License) - Administrators / 25 participants - 2 Year	LETRS for Administrators	354706	9781491630440	\$6,250.00
LETRS Participant Materials Bundle (Print + License) with 4 Face-to-Face Professional Learning Sessions - Administrators / 25 participants - 2 Years	LETRS for Administrators	382521	9798765300091	\$28,250.00
LETRS Participant Materials Bundle (Print + License) with 8 Live Online Professional Learning Sessions - Administrators / 25 participants - 2 Years	LETRS for Administrators	382539	9798765300107	\$30,650.00
LETRS Participant Materials Bundle with Manuals (Print + License) - Administrators (including 3rd Edition Units 1-8 print manual) / 1 participant - 1 Year	Principal's Primer	371389	9781491620281	\$622.00
LETRS Participant Materials Bundle with Manuals (Print + License) - Administrators (including 3rd Edition Units 1-8 print manual) / 40 participants - 1 Year	Principal's Primer	371389	9781491620281	\$24,880.00
LETRS Participant Materials Bundle (Print + License) - Administrators / 1 participant - 1 Year	Principal's Primer	354706	9781491630440	\$184.00
LETRS Participant Materials Bundle (Print + License) - Administrators / 40 participants - 1 Year	Principal's Primer	354706	9781491630440	\$6,560.00
LETRS Participant Materials Bundle (Print + License) with 2 Face-to-Face Professional Learning Sessions - Administrators / 40 participants - 1 Year	Principal's Primer	382521	9798765300091	\$15,060.00
LETRS Participant Materials Bundle (Print + License) with 4 Live Online Professional Learning Sessions - Administrators / 40 participants - 1 Year	Principal's Primer	382539	9798765300107	\$12,560.00
LETRS Facilitator Bundle (Print + License) - Facilitator Guide for Units 1-4 / 1 Participant - 1 Year	Facilitator	356605	9781491631898	\$499.00
LETRS Facilitator Bundle (Print + License) - Facilitator Guide for Units 5-8 / 1 Participant - 1 Year	Facilitator	356613	9781491631904	\$499.00
LETRS Facilitator Bundle (Print + License) - Facilitator Guide for Units 1-8 / 1 Participant - 1 Year	Facilitator	356621	9781491631911	Discontinued for 2023
LETRS Early Childhood Facilitator Bundle (Print + License) - Facilitator Guide for Units 1-4 / 1 Participant - 1 Year	Facilitator	356630	9781491631928	\$199.00
LETRS Facilitator Bundle (Print + License) with Face-to-Face or Live Online Professional Learning - Facilitator Guide for Units 1-4 / 25 Participants - 1 Year	Facilitator	382547	9798765300114	\$35,275.00
LETRS Facilitator Bundle (Print + License) with Face-to-Face or Live Online Professional Learning - Facilitator Guide for Units 5-8 / 25 Participants - 1 Year	Facilitator	382555	9798765300121	\$35,275.00
LETRS Facilitator Bundle (Print + License) with Face-to-Face or Live Online Professional Learning - Facilitator Guide for Units 1-8 / 25 Participants - 1 Year	Facilitator	382563	9798765300138	Discontinued for 2023
LETRS Facilitator Bundle (Print + License) with Face-to-Face or Live Online Professional Learning - Facilitator Guide for Early Childhood / 25 Participants - 1 Year	Facilitator	382571	9798765300145	\$21,375.00

LETRS Individual Components: Professional Learning				
	Version	Catalog Number	13-Digit ISBN	2023 Price
LETRS Facilitator Face-to-Face or Live Online Professional Learning	Facilitator	356584	9781491609712	\$5,700.00
LETRS Face-to-Face Professional Learning Days	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	382387	9781491609729	\$5,500.00
LETRS Face-to-Face Professional Learning Make-up Day	3rd Edition/ Early Childhood	382395	9781491627488	\$5,500.00
LETRS Upgrade from Live Online Session to Face-to-Face Day	3rd Edition/ Early Childhood/ Principal's Primer	379962	9781491625552	Discontinued for 2023
LETRS Live Online Professional Learning Sessions	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	382580	9781491609736	\$1,800.00
LETRS Live Online Professional Learning Make-up Session	3rd Edition/ Early Childhood/LETRS for Administrators	382598	9798765300169	\$1,800.00
LETRS Success Partnership Bronze	3rd Edition/ Early Childhood/LETRS for Administrators			\$6,500.00
LETRS Success Partnership Silver	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	382408	9781491627495	\$11,400.00
LETRS Success Partnership Gold	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	382416	9781491627501	\$17,100.00
LETRS Success Partnership Platinum	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	382424	9781491627518	\$29,900.00
LETRS Dedicated District Success Manager	3rd Edition/ Early Childhood/LETRS for Administrators / Principal's Primer	377684	9781491624128	\$230,000.00
LETRS Public Unit Live Online Professional Learning Session (per unit pricing) - 3rd Edition	3rd Edition	374361	9781491621265	\$500.00
LETRS Public Unit Live Online Professional Learning Session (per unit pricing) - Early Childhood	Early Childhood	374379	978149162129X	\$500.00
LETRS Facilitator Public Professional Learning Session (per person pricing) - Facilitator 3rd Edition	Facilitator	355717	9781491631126	\$3,200.00
LETRS Facilitator Public Professional Learning Session (per person pricing) - Facilitator Early Childhood	Facilitator	357448	9781491631126	\$1,600.00
LETRS Online Course Post Test Reset	Facilitator	961498	9781491632550	Discontinued for 2023
Literacy Symposium for 2E Facilitators	Facilitator	356592	9781491631973	\$180.00

LETRS Individual Components: Print Material				
	Version	Catalog Number	13-Digit ISBN	2023 Price
LETRS 3rd Edition Participant Book (Print) (Replacement Only) Units 1-4	3rd Edition	353949	9781491609606	\$229.00
LETRS 3rd Edition Participant Book (Print) (Replacement Only) Units 5-8	3rd Edition	353957	9781491609644	\$229.00
LETRS Administrator Participant Manual	LETRS for Administrators	380681	9781491626230	\$100.00
LETRS for Early Childhood Educators Participant Manual (Replacement Only)	Early Childhood	353121	9781491629406	\$80.00

LETRS Individual Components: Licensing				
	Version	Catalog Number	13-Digit ISBN	2023 Price
LETRS Online Course Extension	3rd Edition/ Early Childhood	353973	N/A	\$99.00
LETRS Facilitator Online Renewal with Symposium Units 1-4	3rd Edition	356681	9781491631980	\$207.00
LETRS Facilitator Online Renewal with Symposium Units 5-8	3rd Edition	356699	9781491631997	\$207.00
LETRS Facilitator Online Renewal with Symposium Units 1-8	3rd Edition	356728	9781491632017	\$207.00
LETRS Facilitator Online Renewal with Symposium Early Childhood	3rd Edition/ Early Childhood	356701	9781491632000	\$207.00
LETRS Online Course	LETRS for Administrators	386046	9798765302682	\$150.00
LETRS Online Course Extension	LETRS for Administrators	354722	N/A	\$99.00

ASPIRE				
Product Name	Product Type	Catalog Number		2023 Price
Lexia Aspire Professional Learning 1-yr Participant License	License	386943		\$600.00
Lexia Aspire Professional Learning 1-yr Leader License	License	386951		\$600.00
Lexia Aspire Success Partnership - Bronze	Professional Learning	386936		\$4,000.00
Lexia Aspire Success Partnership - Silver	Professional Learning	386994		\$8,300.00
Lexia Aspire Success Partnership - Gold	Professional Learning	387006		\$11,800.00
Lexia Aspire Success Partnership - Platinum	Professional Learning	387014		\$16,100.00

## CONFIDENTIALITY PROVISIONS STUDENT AND EMPLOYEE RECORDS

**THIS ADDENDUM**, executed and effective as of the 9<sup>th</sup> day of June, 2023, by and between Lexia Learning Systems LLC, a corporation organized and existing under the laws of Delaware (the “Company”), and the **FAIRFAX COUNTY SCHOOL BOARD**, a public body corporate and politic organized and existing under the laws of the Commonwealth of Virginia (the “School Board”), recites and provides as follows.

### Recitals

The Company and the School Board are parties to a certain agreement entitled 4400011861 of even date herewith (the “Agreement”). In connection with the execution and delivery of the Agreement, the parties wish to enter into this Addendum in order to clarify and make certain modifications to the terms and conditions set forth therein.

The Company and the School Board agree that the purpose of such terms and conditions is (i) the identification of Company as an entity acting for the School Board in its performance of functions that a School Board employee otherwise would perform; (ii) the establishment of procedures for the protection of personally identifiable information contained in employee and student records, including such personally identifiable information contained in either (1) non-directory information of any kind, whether provided by or created for FCPS pursuant to this contract, or (2) directory information as to which the eligible student or his family has opted out of disclosure (collectively, “FCPS Confidential Records”), including procedures regarding security and security breaches; and (iii) to ensure compliance with the Family Educational Rights and Privacy Act (“FERPA”).

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, the parties agree as follows.

### Agreement

The Agreement is amended hereby as follows:

1. The following provisions shall be deemed to be included in the Agreement and, in the event of a conflict or ambiguity between the Agreement and this Addendum, the terms of this Addendum will in all events govern and control:

**Confidentiality Obligations Applicable to Certain FCPS Records.** The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS Confidential Records”.

The Company shall cause each officer, director, employee and other representative who shall have access to FCPS Confidential Records during the term of the Agreement (collectively, the “Authorized Representatives”) to maintain in strict confidence and trust all FCPS Confidential Records. The Company shall take all reasonable steps to insure that no FCPS Confidential Records are disclosed to any person or entity except those who (i) are Authorized Representatives of the Company performing functions for FCPS under the

Agreement and have agreed to be bound by terms consistent with, and no less restrictive, than those of this Addendum; (ii) are authorized representatives of FCPS, or (iii) are entitled to access such FCPS Confidential Records from the Company pursuant to federal and/or Virginia law. The Company shall use FCPS Confidential Records and shall take all reasonable steps necessary to ensure that its Authorized Representatives shall use such records, solely for purposes related to and in fulfillment of the performance by the Company of its obligations pursuant to the Agreement.

The Company shall: (i) designate one of its Authorized Representatives to be responsible for ensuring that the Company and its Authorized Representatives maintain the FCPS Confidential Records as confidential; (ii) train the other Authorized Representatives with regard to their confidentiality responsibilities hereunder and pursuant to federal and Virginia law; and (iii) maintain at all times a list of Authorized Representatives with access to FCPS Confidential Records.

**Other Security Requirements.** The Company shall maintain all technologies, policies, procedures and practices necessary to secure and protect the confidentiality and integrity of FCPS Confidential Records, including procedures to (i) restrict access to such records in accordance with the Agreement and this Addendum; (ii) establish user IDs and passwords as necessary to protect such records; (iii) protect all such user passwords from detection and unauthorized use; (iv) prevent hostile or unauthorized intrusion that could compromise confidentiality, result in data corruption, or deny service; (v) prevent and detect computer viruses from spreading to disks, attachments to e-mail, downloaded files, and documents generated by word processing and spreadsheet programs; (vi) minimize system downtime; (vii) notify FCPS of planned system changes that may impact the security of FCPS Confidential Records; (viii) return or destroy FCPS Confidential Records that exceed specified retention schedules; (ix) permit periodic security audits by FCPS or designated third party using applicable regulations and industry best practice standards as benchmarks, and make commercially reasonable efforts to remediate the vulnerabilities discovered; and (x) in the event of system failure, enable immediate recovery of FCPS records to the previous business day.

In the event of a security breach, the Company shall (i) immediately take action to close the breach; (ii) notify FCPS within 2 business days after Company's first knowledge of the breach, the reasons for or cause of the breach, actions taken to close the breach, and identify the FCPS Confidential Records compromised by the breach; (iii) return compromised FCPS Confidential Records for review; (iv) provide communications on the breach to be shared with affected parties and cooperate with FCPS efforts to communicate to affected parties by providing FCPS with prior review of press releases and any communications to be sent to affected parties; (v) take all legally required, reasonable, and customary measures in working with FCPS to remediate the breach which may include toll free telephone support with informed customer services staff to address questions by affected parties and/or provide monitoring services if necessary given the nature and scope of the disclosure; (vi) cooperate with FCPS by providing information, records and witnesses needed to respond to any government investigation into the disclosure of such records or litigation concerning the breach; and (vii) provide FCPS with notice within 2 business days after notice or service on Company,

whichever occurs first, of any lawsuits resulting from, or government investigations of, the Company's handling of FCPS records of any kind, failure to follow security requirements and/or failure to safeguard confidential information. The Company shall provide satisfactory documentation of its compliance with the security requirements of this provision prior to performing services under the Agreement. The Company's compliance with the requirements of this provision is subject to verification by FCPS personnel or its agent at any time during the term of the Agreement.

### **Applicability of Confidentiality and Security Provisions to Non-Confidential Records**

To the extent that FCPS provides non-confidential information to Company under this Agreement, such as student records containing only directory information as to which no opt-out has been filed, de-identified information, and FCPS records not pertaining to employees or students, the Confidentiality and Security paragraphs set forth in this Addendum shall not apply, *provided that* the notice obligation under subsection (vii) of the preceding paragraph shall apply to lawsuits and investigations involving FCPS records of any kind.

### **Disposition of FCPS Confidential Records Upon Termination of Agreement**

Upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, and upon receipt of written request from the School Board, the Company covenants and agrees that it promptly shall deliver to the School Board, and shall take all reasonable steps necessary to cause each of its Authorized Representatives promptly to deliver to the School Board, all FCPS Confidential Records. The Company hereby acknowledges and agrees that, solely for purposes of receiving access to FCPS Confidential Records and of fulfilling its obligations pursuant to this provision and for no other purpose (including without limitation, entitlement to compensation and other employee benefits), the Company and its Authorized Representatives shall be deemed to be school officials of the School Board, and shall maintain FCPS Confidential Records in accordance with all federal state and local laws, rules and regulations regarding the confidentiality of such records. The non-disclosure obligations of the Company and its Authorized Representatives regarding the information contained in FCPS Confidential Records shall survive termination of the Agreement. The Company shall indemnify and hold harmless the School Board from and against any loss, claim, cost (including attorneys' fees) or damage of any nature arising from or in connection with the breach by the Company or any of its officers, directors, employees, agents or representatives (including the Authorized Representatives) of any provision of this Addendum.

**Certain Representations and Warranties.** The Company hereby represents and warrants as follows: (i) the Company has full power and authority to execute the Agreement and this Addendum and to perform its obligations hereunder and thereunder; (ii) the Agreement and this Addendum constitute the valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy or similar laws affecting the rights of creditors and general principles of equity; and (iii) the Company's execution and delivery of the Agreement and this Addendum,

and compliance with their respective terms, will not violate or constitute a default under, or require the consent of any third party to, any agreement or court order to which the Company is a party or by which it may be bound.

**Governing Law; Venue.** Notwithstanding any provision contained in the Agreement to the contrary, (i) the Agreement, as amended hereby, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles; and (ii) any dispute arising under or in connection with the Agreement, as amended hereby, which is not otherwise resolved by the parties hereto shall be decided by a court of competent jurisdiction located in the Commonwealth of Virginia.


**Termination.** This Addendum shall remain in force until notification to terminate is issued by FCPS. At time of termination, vendor is to follow regulations for Disposition of FCPS Confidential Records Upon Termination of Agreement as stated above.

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed by their duly authorized officers effective as of the date first written above.

**LEXIA LEARNING SYSTEMS LLC**

By:   
[Name] Nick Gaehde  
[Title] President

**FAIRFAX COUNTY SCHOOL BOARD**

By:   
Michelle R. Pratt  
Director, Office of Procurement Services