

JUN 25 2019

Schoology, Inc.
Attn: Jacky Poulos
Two Penn Plaza, 10th Floor
New York, NY 10121

Reference: RFP2000002610; Integratable Learning Management System (iLMS)

Dear Ms. Poulos:

Acceptance Agreement

Contract Number: 4400009171

This acceptance agreement signifies a contract award to Schoology, Inc. for Integratable Learning Management System (iLMS). The period of the contract shall be from Date of Award through June 30, 2026 with optional two (2) three-year renewals.

The contract award shall be in accordance with:

1. This Acceptance Agreement;
2. The Terms and Conditions of RFP2000002610; Integratable Learning Management System (iLMS), and all addenda;
3. Your Proposal dated 9/13/2018;
4. The signed Memorandum of Negotiations.

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.

Sincerely,



Michelle R. Pratt
Director

MRP/sm

VO
6-25-19



Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, VA 22042

June 11, 2019

Sent via email: jpoulos@schoology.com

Schoology, Inc.
Two Penn Plaza, 10th Floor
New York, NY 10121

Subject: Memorandum of Negotiations

Reference: Request for Proposal RFP 2000002610 for Integratable Learning Management System

Dear Ms. Poulos:

Thank you for responding to Request for Proposal, 2000002610; Integratable Learning Management System.

Enclosed with this letter is the Memorandum of Negotiations, which defines the final agreement between your firm and Fairfax County Public Schools.

Please review the Memorandum of Negotiation, execute a legal authorized signature in the space provided, and return it to my office within five (5) days of the date of this letter. After I receive the signed Memorandum, I will return an executed copy to you along with the Acceptance Agreement which signifies award of this contract to your firm.

If you have any questions or need additional information, don't hesitate to contact me at 571-423-3598 or via email. smkaimel@fcps.edu. Thank you for your interest in Fairfax County Public Schools' requirements and we hope that you will bid on future requirements.

Sincerely,

Samira Mkaimel

Attached: Memorandum of Negotiations

DISTRIBUTION:

FCPS – DIT - Jean Welsh
FCPS – DIT - Shane Wheeler
FCPS – DIT - Ted Davis

MEMORANDUM OF NEGOTIATION

RFP 200002610

The County of Fairfax, Fairfax County Public Schools (hereinafter called the County or FCPS) and Schoology, Inc. (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 440009171. The final contract contains the following items:

- a. Fairfax County's Request for Proposal 200002610- Integratable Learning Management System and all Addenda;
- b. Schoology, Inc. Technical and Business proposal as amended by this Memorandum of Negotiations;
- c. The Memorandum of Negotiations;
- d. Signed Confidentiality Addendum; and
- e. All subsequent amendments to the contract.

The following are to be included in the contract:

1. Schoology supports LTI and any partner who wishes to integrate using LTI
2. Schoology will work with eCart to integrate eCart into Schoology to ensure that the current requirements of the district are met
3. Schoology commits to functionality that forces alignment of assessment items by Q4 2019
4. Schoology will deliver the ability to export AMP assessment results via integration with a third-party system (through a common API) by August 31, 2019
5. FCPS will have access to a testing environment for entire contract length
6. Schoology will work with FCPS to ensure all assessment is exportable nightly via FCPS QTI process
7. Blended Learning Package:

Schoology will provide 1 cohort of the Blended Learning Package at no cost. This provides the following: Access for up to fifteen (15) named staff members to:

- a. Three face-to-face days of professional learning
 - b. Monthly synchronous or asynchronous learning
 - c. Support, coaching and collaboration with an educational expert on the Schoology team
8. Professional Learning:
Schoology will provide Fairfax County Public Schools with our Professional Learning Subscription at no cost
The Professional Learning Subscription provides access for up to five (5) named staff members to:
 - a. Unlimited Open Enrollment Training sessions
 - b. Self-Paced course materials
 - c. Sample plans for designing professional learning materials

- d. Professional Learning Community with exclusive webinars and moderated discussions
- 9. NEXT Conference: Schoology will offer Fairfax County Public Schools up to 10 tickets for free to attend NEXT (held July 9th - July 12th)
- 10. Customer Advisory Board:

Fairfax County Public Schools will have a seat on the Customer Advisory Board (CAB). The CAB is a small and exclusive group of Schoology clients

11. Support:

Premium Support provides the following:

- a. 24/7/365 Online Help Center
- b. 24/7/365 Online Community
- c. 24/7/365 Email/Web support within 8-hour response time for Support Contacts
- d. 24/7/365 Phone support for Support Contacts
- e. 24/7/365 Chat support for Support Contacts
- f. Up to 3 Admin Support Contacts

12. Project Plan:

- a. Schoology's Client Success Team will work with FCPS to devise a project plan to ensure successful installation of the solution.
- b. The following table details the services included as part of Schoology onboarding plan:

<ul style="list-style-type: none">• Kickoff Call led by Schoology team.• Onsite planning, including assistance from multiple team members for kick-off, planning, and follow through.• Onsite project management and consulting days.• Onsite executive engagement visits.• Weekly status calls with Schoology team members.• Assistance with Enterprise Configuration.• Custom branding of your Schoology site.• Domain customization of Schoology landing page to your domain or subdomain.• Data consolidation of free Schoology user data.• Technical Planning Call between Implementation Engineer and client counterpart to create a data population plan.• Assistance from Implementation Engineer with provisioning of users, courses, and enrollments• Test environment to review provisioned data.	<ul style="list-style-type: none">• Assistance with user authentication via single sign-on.• Schoology Enterprise Administration training.• Schoology system administration consulting delivered by a Schoology Product Engagement Specialist.• Product consulting on the various components of Schoology.• Assistance with all aspects of the implementation process, including guidance, documentation, and other non-hands-on help.• Onsite Train-the-Trainer sessions led by a Schoology Instructor.• Additional web-delivered follow-up training sessions.• Assistance with change management strategies and best practices.• Ongoing support from Schoology Client Support Specialists.
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- c. Schoology's plan for FCPS includes a project manager, a client success manager and an implementation engineer
- d. Schoology will work with FCPS to ensure all courses, assessments, and questions are migrated. Due to the volume of content, Schoology has proposed splitting content migration across years 1 and 2

13. Web Conferencing:

- a. Schoology Conferences is included at no additional cost. Schoology Conferences allows FCPS to engage in web conferencing sessions and record and store conferences for up to 7 days. With premium access, provided through BigBlueButton, FCPS will be able to store recorded conferences indefinitely
- b. Schoology can work with FCPS on an integration with any third-party web conferencing tool that conforms to IMS Global Standards or has an open API can be integrated.

14. Training:

- a. Schoology will provide 40 onsite days at no additional cost in addition to what was included in the initial proposal.
- b. Schoology will allow FCPS to use these days throughout the term of the contract.
- c. Schoology has included 3 onsite days into the implementation plan to train the administrators additional functionality of AMP. If additional support is needed, we will provide up to an additional 3 days of onsite training and any virtual support as needed for this group as they get up to speed on the assessment portion of the platform.

15. Project Management:

Schoology's Project Plan includes a project manager for Fairfax County Public Schools. FCPS will also be assigned a Client Success Manager as well as an Executive Sponsor, Schoology's President, Justin Serrano.

16. Accessibility:

Schoology is committed to working with Fairfax to find a solution for checking/improving the accessibility of content provided through the platform

Should FCPS decide to use Blackboard Ally, Schoology commits to the software development required for integration with Blackboard Ally by August 2020, the licensing cost for Ally would be: \$1 per student per year

17. Milestone payments:

The milestone payment plan includes the fees for Installation and Data Migration that were line itemed in the Price Summary for Year 1 and Year 2. Total budget for these line items is \$351,000. The below implementation timeline and milestones assumes assessment is not fully rolled out until Year 3, but that the system should be ready for pilot in Year 2.

Implementation Milestones for June 2019 - November 2020	Amount
<p>Milestone 1 - estimated to be completed June 2019</p> <ul style="list-style-type: none"> ● Schoology Kickoff Meeting ● Domain Customization ● Create Production Enterprise Configuration ● Create Test Environment Configuration ● Initial Technical Planning Meeting ● Initial Content Migration Planning ● Initial Professional Development Planning Meeting 	\$50,000
<p>Milestone 2 - estimated to be completed August 2019</p> <ul style="list-style-type: none"> ● Test Data Population in Test Environment ● Configure Single Sign-on ● System Administration - Roles & Permissions Review ● Data Population in Production for pilot schools ● Complete Content Migration for importable content for courses being delivered in the pilot schools ● Grade Passback configured for Pilot Schools 	\$60,000
<p>Milestone 3 - estimated to be completed December 2019</p> <ul style="list-style-type: none"> ● Content Migration Planning for additional courses ● Initial Assessment Migration Planning Meeting ● Content Migration completed all remaining courses ● AMP enabled for the purpose of environment configuration ● AMP Administration - Configuration, Roles & Permissions 	\$50,000
<p>Milestone 4 - estimated to be completed March 2020</p> <ul style="list-style-type: none"> ● Assessment Migration Review Meeting ● Full District Rollout Meeting ● System Administration - Roles & Permissions Audit ● Assessment Migration completed for 20% of Assessments 	\$36,000
<p>Milestone 5 - estimated to be completed August 2020</p> <ul style="list-style-type: none"> ● Summer Rollover Completed ● Data Population for all schools in Production ● Content Migration completed for remaining courses ● Assessment Migration completed for 50% of Assessments ● Grade Passback configured for remaining Schools 	\$70,000
<p>Milestone 6 - estimated to be completed November 2020</p> <ul style="list-style-type: none"> ● Assessment Migration completed for the remaining assessments 	\$85,000

18. All Pricing is fully loaded and is inclusive of travel.

19. In the unlikely event of a sale the contract would be assignable to the new ownership, subject to the consent of Fairfax County Public Schools, which consent shall not be unreasonably withheld or delayed. Additionally, Schoology can agree to deposit the source code with a mutually acceptable third-party escrow agent, which source code Fairfax Public schools will be able to access for its sole use, for the sole purpose of maintaining the Licensed Software in the event of Schoology's breach of its obligations herein to provide support and maintain the Licensed Software due to Schoology's insolvency or failure to continue in its Learning management software business.

20. Warranty:

Vendor warrants to the County that, during the applicable Term: (a) this Agreement, the Sales Order and any specifications furnished by Vendor will accurately describe the applicable administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of The County data, and (b) the Schoology System, when used in accordance with the specifications furnished by Schoology, will perform substantially in accordance with such specifications and (c) the Schoology System and services furnished by contractor hereunder do not and will not infringe, violate or in any manner breach any patent, copyright, or trade secret of any third party that exists or is enforceable under the laws of the United States of America. In the event the Schoology System fails to conform to the foregoing warranties, Vendor shall use commercially reasonable efforts to correct such non-conformity. If Vendor is unable to correct the non-conformity, Vendor shall terminate this Agreement and refund to The County any prepaid Subscription fees. The limited remedies described in this section and Vendor's indemnity under Section 63 are Vendor's sole obligations and the County's exclusive remedies for any breach of the limited warranties set forth herein. The limited warranties provided in this Section are void if the non-conformity results from (x) use of the Schoology System in connection with software or hardware not compatible with the Schoology System or not meeting the technical specifications furnished by Schoology; (y) improper or inadequate maintenance of The County's equipment or software; or (z) inadequate Internet connectivity or bandwidth. The County is solely responsible for the results obtained and decisions made from its use of the Schoology System. The Schoology System may include open source software components and use of such components may be subject to additional terms and conditions.

Disclaimers. (a) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SCHOOLOGY SYSTEM IS PROVIDED "AS-IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE SCHOOLOGY SYSTEM WILL BE ERROR FREE. WITHOUT LIMITING OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT THE COUNTY'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH VENDOR WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY AND AVOID SUCH EVENTS, VENDOR CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, VENDOR DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

(c) IN CONNECTION WITH USING THE SCHOOLOGY SYSTEM, THE COUNTY MAY PURCHASE PRODUCTS AND/OR SERVICES FROM, AND/OR PARTICIPATE IN PROMOTIONS OF, THIRD PARTIES. TRANSACTIONS RELATING TO ANY SUCH THIRD-PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND ANY TERMS ASSOCIATED THEREWITH, ARE SOLELY BETWEEN THE COUNTY AND THE RELEVANT THIRD PARTIES. VENDOR DOES NOT SUPPORT, ENDORSE OR MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING, ANY SUCH THIRD-PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND IN NO EVENT WILL VENDOR HAVE ANY LIABILITY WHATSOEVER IN CONNECTION THEREWITH

21. Limited Liability:

LIMITATION OF LIABILITY: EXCEPT TO THE EXTENT THE FOLLOWING LIABILITY LIMITATION IS PROHIBITED BY APPLICABLE LAW, IN NO EVENT WILL THE COUNTY OR VENDOR (OR VENDOR'S DEVELOPERS AND SUPPLIERS) BE LIABLE FOR ANY DAMAGES FOR LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE COUNTY'S OR VENDOR'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE COUNTY FOR THE RIGHT TO USE THE SCHOOLGY SYSTEM IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

22. License Grant:

Grant of License; Subscription. Subject to the terms and conditions of this Agreement and the applicable Sales Order (provided that the terms and conditions of the Sales Order are not in conflict with those of this Agreement), Vendor hereby grants to the County a limited, non-exclusive, non-transferable, license to access and use the Schoology System during the term specified in the Agreement or applicable Sales Order, including any renewals thereof (the "Term"). The County shall not (a) copy the Schoology System or any part, feature, function or user interface thereof (b) use the Schoology System to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (c) attempt to gain unauthorized access to the Schoology System or its related systems or networks; and (d) reverse engineer the Schoology System (to the extent such restriction is permitted by law).

23. Exceptions:

- a. The general conditions and instructions to bidders (Ref: RFP2000002610 Appendix A) will remain unchanged except as listed below:
- b. Page 35, Section 32, termination for Convenience: A 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 to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In the event of such termination, Contractor shall have no obligation to provide a refund to the County for any prepaid unearned fees.
- c. Page 35, Section 33, Termination for Contract for Cause: a. If either party commits a material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days after the giving of notice by the other party specifying such breach, the non-defaulting party may terminate the Agreement.
- d. Page 35, Section 35, Subletting of Contract or Assignment of Contract Funds: It is mutually understood and agreed that 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, provided, however, that Contractor may assign its rights, obligations, or interests under this Contract in connection with a merger, acquisition, divestiture, sale of business, reorganization or similar corporate transaction involving

Contractor without such written permission provided that such successor entity shall be bound by the terms of this Contract and notification is provided within 30 days.

- e. Page 39, Section 63, Indemnification: Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against all damages for bodily injuries, death, damage to real or tangible property, and theft to the extent proximately caused by the Contractor in the course of performing this Agreement; (b) any third party claim against the County alleging that the Schoology System and services provided under this Agreement infringe the US patent copyright, or trade secret of such party; (c) any third party 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 therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or its employees or contractors. 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.

24. Order of precedence:


- a. Unless otherwise stated in this Memorandum of Negotiations and where there are conflicting terms, the original RFP terms and conditions will take precedence over the terms of any Schoology license agreement.

Attachments:

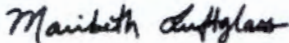
Signed Confidentiality Provisions: Student and Employee Records
Pricing Schedule

All other prices, terms, and conditions remain the same.

ACCEPTED BY:


Justin Serrano, President
Schoology, Inc.

June 12, 2019
Date


Maribeth Luftglass, Assistant Superintendent
Department of Information Technology

June 12, 2019
Date


Michelle R. Pratt, Director
Office of Procurement Services

6/25/19
Date

**CONFIDENTIALITY PROVISIONS
STUDENT AND EMPLOYEE RECORDS**

THIS AGREEMENT, executed and effective as of the 12th day of June, 2019, by and between **SCHOLOGY, INC.**, 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 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 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:

Confidentiality Obligations Applicable to Certain FCPS Records. The Company hereby covenants and agrees that it shall maintain, in strict confidence and trust, all FCPS employee records, as well as student records containing 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").

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 the terms of this Agreement or a Confidentiality Agreement (as defined below) executed pursuant hereto; (ii) are authorized representatives of FCPS, or (iii) are entitled to 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; (iii) maintain at all times a list of Authorized Representatives with access to FCPS Confidential Records; (iv) cause each Authorized Representative to execute a written covenant of confidentiality in substantially the form set forth on Attachment hereto (the "Confidentiality Agreement") prior to his or her

performance of any services contemplated by the Agreement and shall deliver any and all such Confidentiality Agreements to the School Board upon request.

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 as described in the "Confidentiality" provision of this Agreement; (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; (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 24 hours of 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 24 hours of 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 standards 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 shall not apply, *provided that* the notice obligation under subsection (vii) 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, 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 of the obligations of the Company or its Authorized Representatives under this provision or under a Confidentiality Agreement, as the case may be.

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 to perform its obligations hereunder and thereunder; (ii) the Agreement 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 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 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 hereunder 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 agreement 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 Agreement to be executed by their duly authorized officers effective as of the date first written above.

SCHOOLGY, INC.

By: 

Justin Serrano
President

FAIRFAX COUNTY SCHOOL BOARD

By: 

Michelle R. Pratt
Director, Office of Procurement Services

Contract 4400009171

Attachment

Covenant of Confidentiality

In connection with the performance by Schoology, Inc. (the "Company") of its obligations under that certain agreement with the Fairfax County School Board dated June 12, 2019, as the same shall have been amended by that certain Agreement of even date therewith (the "Agreement"), the undersigned authorized representative of the Company (the "Authorized Representative"), for good and valuable consideration, the receipt and sufficiency of which is acknowledged, hereby covenants and agrees as follows, with knowledge that the Fairfax County School Board is relying upon the statements set forth herein.

The Authorized Representative hereby covenants and agrees that he or she: (i) shall maintain in strict confidence and trust all records, reports and other documents or materials of any nature relating to the operations, students, families and employees of Fairfax County Public Schools (collectively, the "FCPS Confidential Records"); (ii) shall not disclose any FCPS Confidential Records to any person or entity who has not agreed to be bound by the terms of the Agreement, or a sworn statement executed pursuant thereto, unless the person or entity is an Authorized Representative of FCPS or is otherwise entitled to access to such FCPS Confidential Records pursuant to federal and/or Virginia law; (iii) shall use the FCPS Confidential Records solely for purposes related to and in furtherance of the performance by the Company of its obligations pursuant to the Agreement; (iv), upon expiration of the term of the Agreement, or upon the earlier termination of the Agreement for any reason, promptly shall deliver all FCPS Confidential Records to Fairfax County Public Schools; (v) shall continue to maintain as confidential all information obtained from FCPS Confidential Records after the expiration or termination of the Agreement.

IN WITNESS WHEREOF, the Authorized Representative has executed this Covenant of Confidentiality as of the 12th day of June, 2019.



Justin Serrano
President
Two Penn Plaza, 10th Floor
New York, NY 10121

Contract 4400009171

3. CONSULTING SERVICES:

	Year 1 Pilot	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Project Manager	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00
Implementation Engineer	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00
Product Engagement Specialist	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00	\$200.00
Developer	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00	\$250.00

4. PROJECT MANAGEMENT:

Schoology's Project Plan includes a project manager for Fairfax County Public Schools. Should the Division wish to also have a dedicated onsite resource, we have provided the annual rate for an onsite Project Manager.

	Year 1 Pilot	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Project Manager	\$154,000.00	\$158,000.00	\$162,000.00	\$166,000.00	\$170,000.00	\$174,000.00	\$178,000.00

5. THIRD PARTY SOFTWARE:

A. Turnitin Originality Check Plus

Students (Max)	Year 1 Pilot	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
30,000	\$24,300.00	\$50,058.00	\$77,340.00	\$79,660.00	\$82,050.00	\$84,511.00	\$87,046.00
50,000	\$39,167.00	\$80,683.00	\$124,656.00	\$128,395.00	\$132,247.00	\$136,215.00	\$140,301.00
60,000	\$46,400.00	\$95,584.00	\$147,677.00	\$152,108.00	\$156,671.00	\$161,371.00	\$166,212.00
75,000	\$57,250.00	\$117,935.00	\$182,210.00	\$187,676.00	\$193,306.00	\$199,105.00	\$205,078.00
90,000	\$68,100.00	\$140,286.00	\$216,742.00	\$223,244.00	\$229,941.00	\$236,840.00	\$243,945.00

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B. BigBlueButton:

Schoology Conferences is included at no additional cost. Schoology Conferences allows FCPS to engage in web conferencing sessions and record and store conferences for up to 7 days. With premium access, provided through BigBlueButton, FCPS will be able to store recorded conferences indefinitely.

The pricing for premium conferencing from Big Blue Button is provided below:

Year 1 Pilot	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
\$12,000.00	\$36,000.00	\$48,000.00	\$48,000.00*	\$48,000.00*	\$48,000.00*	\$48,000.00*

*BigBlueButton will review FCPS's usage following year 3. Pricing for years 4-7 may be reduced based on the division's actual usage.

C. Blackboard Ally

License cost for FCPS is \$1 per student per year. In addition to licensing, the integration of Ally functionality into Schoology requires software development work by both Blackboard and Schoology. Should FCPS decide to use Blackboard Ally, Schoology commits to the software development required for integration with Blackboard Ally by August 2020.