

ATTACHMENT G**FINAL COX RESPONSES AND CLARIFICATIONS TO CERTAIN
RFP TERMS**

Cox indicates below its comments and responses to certain identified provisions of the RFP.

RFP PROVISION	COX RESPONSE/CLARIFICATION
Special Conditions, Sec. 4.4	Cox agrees that FCPS may terminate services under the contract due to loss of appropriations upon at least thirty (30) days written notice. FCPS acknowledges that the Services are essential to its operations and agrees to use its best efforts during the Term to obtain sufficient appropriated funds to satisfy its obligations under the Agreement. In the event that funds are appropriated for some but not all Services hereunder, FCPS may only terminate those Services with respect to which sufficient funding is not appropriated.
Special Conditions, Sec. 8	Cox provides various responses and clarifications to Sec. 8 as part of Tab 5 of its proposal.
Special Conditions, Sec. 9	Cox provides various responses and clarifications to Sec. 9 as part of Tab 6 of its proposal.
Special Conditions, Sec. 17.6(g)	Cox acknowledges and agrees, subject to the terms and conditions of the Cox proposal.
Special Conditions, Sec. 22	Cox has appropriate insurance to support its obligations and liabilities in its customer agreements. Additionally, Cox agrees to maintain Cyber/Privacy Liability insurance in the amount of \$1,000,000 per occurrence and annual aggregate, covering the liability of Cox under the Agreement, including costs of third-party notification, and credit monitoring. Fairfax County Public Schools, the Fairfax County School Board, its officers, and employees shall be included as an additional insured in the Cox's Automobile and General Liability policies. Otherwise Cox agrees to comply with the insurance requirements set forth in the RFP with the exception of the requirement for professional liability insurance coverage which has been waived by FCPS.
Special Conditions, Sec. 25.3	Cox acknowledges and notes that most services (with the exception of usage charges) are billed in advance, not arrears.
Special Conditions, Sec. 27.1	Cox acknowledges and notes that any changes to services purchased must be approved in writing by Cox, and set forth in a service order or contract amendment signed by both parties. As used in the preceding sentence, "changes" refers to changes and/or alterations to the type or characteristics of Services provided by

	Cox, and not to suspension or termination thereof by FCPS.
Special Conditions, Sec. 28.	FCPS may direct Cox, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for a period of not more than ninety (90) consecutive days without the written consent of the Contractor, provided that no such suspension, delay, or interruption shall result in a shortening of the Term for the services.
Special Conditions, Sec. 30.	Cox will retain all books, records, invoices and other documents relative to this contract during the Term and for a period of three years after final payment under the Agreement. FCPS's audit rights shall be strictly limited to reviewing documents reasonably related to billing and invoicing for the Services provided by Cox. FCPS shall have no right to audit any Cox confidential information, including information on Cox's data security/IT systems or pricing information for its vendors. Audits shall be at reasonable times and locations as mutually agreed by the parties, and limited to once per calendar year. A mutual Non-Disclosure Agreement shall be executed in a form acceptable to the parties prior to any audit of confidential information.
Special Conditions, Sec. 33	The order of precedence shall be prescribed in the Memorandum of Negotiations entered into by the parties and will follow the following order: the Acceptance Agreement, the Memorandum of Negotiations (and its attachments), FCPS's RFP 2000003581 (Telecommunications and Internet Services) and all addenda thereto, and the Cox proposal.
Special Conditions, Sec. 37	Cox shall comply with the ADA to the extent applicable to Cox in provision of its services to FCPS.
Special Conditions, Sec. 38	Cox notes that HIPAA and a Business Associate Agreement is not applicable to Cox as the requirements of HIPAA do not apply to businesses who act merely as a "conduit" for protected health information. As stated by the Department of Health and Human Services "the conduit exception ... is intended to exclude only those entities providing mere courier services ... and their electronic equivalents, such as internet service providers (ISPs) For example, a telecommunications company may have occasional, random access to protected health information.... Such occasional, random access to protected health information would not qualify the company as a business associate." 78 Federal Register, No. 17, 5571-72. Cox agrees to discuss this issue in good faith to address any concerns.
General Conditions, Sec. 22	See response to Special Conditions, Sec. 33 re: order of precedence. Cox notes that the Cox proposal is subject to the negotiation and execution of a final contract between the parties.
General Conditions, Sec. 29.	FCPS shall have the right to terminate services for convenience (without early termination penalty) by providing at least thirty (30) days prior written notice of such termination, and shall pay to Cox any then-unamortized construction or equipment costs as well as any 3 rd party service provider costs incurred by Cox in connection with such termination.

General Conditions, Sec. 30-	Cox agrees that FCPS may terminate if Cox materially fails to comply with the terms and/or conditions of the Agreement, provided that FCPS shall first give Cox at least thirty (30) days written notice and right to cure prior to any termination for default or cause. If within thirty (30) days after receipt of such written notice, Cox shall have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then there shall be no right to terminate for default or cause. Cox shall not be liable for any issues caused by a force majeure event, delays due to FCPS or its agents, or any issues from causes beyond Cox's reasonable control. Cox further notes that the Cox service level agreements included as part of the Cox bid, outline the sole and exclusive remedies for service interruptions, outages and/or degradations.
General Conditions, Sec. 33	Please see response to Special Conditions, Section 4.4, above.
General Conditions, Sec. 36	Cox will ensure that any subcontractors providing services under this Agreement shall comply with the provisions of Sec. 36.
General Conditions, Sec. 38	Cox notes that no equipment warranties are needed because Cox will retain ownership of the Cox equipment and be responsible for repair and maintenance of same. The Cox Service Terms outlines any other warranties or guarantees.
General Conditions, Sec. 39	Cox's proposal contains highly competitive pricing and Cox looks forward to the opportunity to serve FCPS. Cox will notify FCPS of any voluntary price decreases related specifically to those services which Cox chooses to offer to FCPS which are then mutually agreed to by the parties via a written amendment. Cox notes, however, that it individually prices its services to each customer based upon a multitude of factors including type, quality, and quantity of services ordered,
	geographic location, installation or construction charges, and the terms and conditions of the parties' contract. As the pricing is tailored for each customer based upon these factors, Cox cannot adequately compare pricing amongst various customers. Therefore, Cox's offer is expressly conditioned on the solicitation's automatic price adjustment clause not applying. Cox will work with FCPS in good faith to address any concerns with this provision.
General Conditions, Sec. 40	Cox acknowledges and notes that any changes to services purchased must be approved in writing by Cox, and set forth in a service order or contract amendment signed by both parties. As used in the preceding sentence, "changes" refers to changes and/or alterations to the type or characteristics of Services provided by Cox, and not to suspension or termination thereof by FCPS.
General Conditions, Sec. 54	Cox notes that no sale and transfer of equipment ownership will occur in connection with the Cox services.

General Conditions, Sec. 55(a)	Cox references its response to General Conditions Section 57(a) and (b) below which contains a full intellectual property indemnity for the benefit of FCPS, in lieu of this Section 55(a).
General Conditions, Sec. 56	Cox acknowledges and agrees to provide the services in accordance with the terms and conditions of the final executed contract, and shall comply with all applicable law in the course of the provisions of such services to FCPS.
General Conditions, Sec. 57(a) and (b)—	Cox agrees the following: Cox agrees to indemnify FCPS, and its members, officers and employees against all claims for any physical injury to person or tangible personal property sustained by any person, firm, or corporation to the extent caused by any negligent act, omission, or intentional misconduct by Cox. Cox agrees to indemnify FCPS, and its members, officers and employees from and against any and all claims that any of the Cox services and/or products, when used within the scope of the contract, infringes, violates or misappropriates a valid third party patent, copyright or trademark right ("Infringement Claim"), provided that FCPS promptly notifies Cox in writing of the action after receipt of the claim and provides reasonable cooperation for the defense of the claim to Cox. The foregoing indemnity shall not apply to Infringement Claim(s) arising out of (i) use of Cox products or services in combination with other products and services not furnished by Cox or not previously approved by Cox where such combination is not required for the normal operation of the product or service in question and where such claim would not have occurred in the absence of such combination; (ii) use of the products or services in a manner not customary for a large K-12 public school division or not expressly otherwise contemplated by the parties in writing, or any modification of the Cox service by FCPS without written authorization from Cox, (iii) materials or content transmitted, accessed or received by FCPS and/or its end users through the use of the Cox Services; or (iv) the use of the Cox Service by FCPS and/or end users in violation of, or in connection with a violation of, the contract (including any Cox policies referenced herein) or applicable laws, rules or regulations where such claim would not have occurred in the absence of such violation. Cox will not be relieved of its indemnity obligations hereunder, unless Cox's right or ability to defend the claim has been prejudiced by FCPS's failure to provide Cox with prompt notice or reasonable assistance with defense, and then only to the extent of such prejudice. At Cox's election, Cox may, at its sole expense, elect promptly to do any of the following (a) procure the right for FCPS to continue using the product or Services under the contract; (b) modify the applicable product or Service so it is no longer infringing but is functionally equivalent or superior; or (c) replace the applicable product or Service with non-infringing products or services that are functionally equivalent or superior in performance; or (d) terminate the product or Service. Cox's election with regard to (a) – (d) of the preceding sentence will in no event relieve Cox of its obligation to indemnify FCPS for any Infringement Claim. The foregoing states the entire liability of Cox for Infringement Claims. Cox shall not be liable for damage to property or for injury to any person arising from the installation or removal of equipment unless caused by the negligence or intentional misconduct of Cox, its agents, or any Cox-related entity. Under no circumstances will Cox be liable for

	any indirect, incidental, special or consequential damages, including lost profits, arising from the resulting contract or its provision of the services.
General Conditions, Sec. 60	Cox agrees to the timeline, provided the evaluation matrix and copy of the awarded vendor's proposal is provided to review. If said information is not timely provided, vendors shall have five calendar days from the date of receiving such information to file a protest.
General Conditions, Sec. 63	Cox agrees, subject to the notice and cure periods set forth in the Cox proposal for curing a default.
General Conditions, Sec. 57	In the event of a dispute, the parties shall cooperate in good faith, and escalate the dispute to appropriate authority levels to help ensure a resolution. Nothing set forth in this provision shall be interpreted to waive any Cox right under the contract, in equity or at law.
General Conditions, Sec. 70—	Cox acknowledges and agrees, and notes that any cooperative purchase is subject to Cox's written approval.
General Conditions, Sec. 73	Please see response to Special Conditions, Section 30, above.
General Conditions, Sec. 74.	Cox is committed to delivering accessible and usable products, services and support to meet the needs of our customers with disabilities. In January of 2017, Cox created a dedicated Accessibility program, and is actively working to ensure the accessibility of our products and services is constantly improving. To the extent applicable to Services provided under this Agreement and to the extent required by applicable law, Cox will comply with the applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973, and applicable federal regulations, as amended from time to time (ADA Laws). To the extent the ADA Laws are not applicable, Cox has a dedicated customer accessibility program which is working to develop certain Cox products, services and support with a goal of accommodating many needs of Cox customers with disabilities in the future.
Appendix D—Agreed.	Cox acknowledges and agrees subject to the following: (i) Service uptime and overall performance shall be governed by the Cox service level agreements included in the Cox proposal, and (ii) the response and repair SLAs set forth in Appendix D shall be valid only for FCPS, and shall not apply to the purchase of Cox services by use of the FCPS contract as a procurement vehicle by any 3 rd party with the exception of Fairfax County.