



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

04/25/2024

AMENDMENT NO. 1

CONTRACT TITLE: Telecommunications and Internet Services

<u>CONTRACTOR</u>	<u>SUPPLIER ID</u>	<u>CONTRACT NO.</u>
Cox Virginia Telcom, LLC 13900 Lincoln Park Dr., Suite 500 Herndon, VA 20171	1000022818	4400011828

By mutual agreement, Contract 4400011828 is amended to incorporate the CAPP (Cox Access Partnership Program) Reimbursement Agreement.

All other prices, terms and conditions remain unchanged.

ACCEPTANCE:

BY: _____	DocuSigned by: <i>Eddie Jenkins</i> D50380E2F5E3421...	VP, Cox Business Virginia
	Signature	Title
	Eddie Jenkins	4/2/2024
Printed Name	Date	
	DocuSigned by: <i>Michelle Pratt</i> C14D4C9B7D1F422...	
	Michelle R. Pratt	Director

MRP/rt

DISTRIBUTION:
Contractor

REIMBURSEMENT AGREEMENT FOR THE COX ACCESS PARTNERSHIP PROGRAM (CAPP)

This **REIMBURSEMENT AGREEMENT** (this “**MOU**” or “**Agreement**”) is entered into as of July 1, 2023 (“Effective Date”), by and between **Fairfax County School Board**, a public body organized and existing under the laws of the Commonwealth of Virginia which governs the Fairfax County Public Schools (“District”), and **Cox Virginia Telecom, LLC.**, a Delaware limited liability company or corporation (“Cox”). District and Cox are collectively referred to herein as the “Parties” or individually, as a “Party.”

RECITALS

WHEREAS, District desires to offer funding for certain individuals and families selected by Cox (collectively, the “Participants”) which funding will offset the cost of the Participant’s Cox home internet services (the “Reimbursement Program”);

WHEREAS, Cox has agreed to participate with District in administering the Reimbursement Program as it applies to Cox home internet services, in accordance with the terms and conditions of this MOU;

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this MOU, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree and mutually understand as follows:

TERMS

1. **Term.** The Term of this MOU shall begin on the Effective Date and will continue until terminated by either Party in accordance with Section 7 below. In no event shall the Term of this MOU extend beyond the term of the commercial services agreement between Cox and District identified as Contract No. 4400011828.
2. **Reimbursement Program Requirements.**
 - (a) District shall have the sole discretion and obligation to determine who will be designated as Participants, and therefore eligible to participate in the Reimbursement Program.
 - (b) District shall have the sole responsibility and obligation to communicate the following to all potential Participants:
 - The details and the availability of the Reimbursement Program;
 - All information regarding how the Participants can subscribe to Cox home internet services. Participants can apply for the process on the Cox website with more information provided by Cox to District;
 - Any subsequent changes to the District Reimbursement Program including but not limited to any change in material terms, changes in credits applicable to such Participants, and any termination of the Reimbursement Program; and
 - District shall notify each Participant of its removal from the Required Participating List promptly following such removal and further, that such Participant will be required to pay all service fees directly to Cox in full if such Participant does not terminate its service agreement with Cox.

The Parties acknowledge that Cox shall have no obligation whatsoever with respect to communicating

with any Participant, or potential Participant, in connection with the District's Reimbursement Program, except as a Subscriber to the Cox Program.

- (c) District expressly acknowledges a Participant must subscribe to Cox home internet services in order to be eligible for the Reimbursement Program as outlined under this MOU. District further acknowledges that final qualification for participation in the Program shall be determined solely by Cox, in its sole and absolute discretion, upon receipt of a proper application as required on the website. Cox cannot, and does not, guaranty that any individual applicant will be eligible for Cox home internet services. Cox shall have the right to accept and reject any such application or revoke the eligibility or terminate the Participant's use of the Cox services in its sole discretion.
- (d) District shall determine the date upon which it desires to commence the Reimbursement Program by sending Cox written notice of the commencement date along with the complete address, including any city, state, zip code and applicable apartment or unit number of all Participants in the Reimbursement Program (collectively, the "Required Participant Information") for the applicable month along with the amount of each credit that Cox will provide to each Participant. If requested by Cox, District shall provide any follow-up information that may be necessary and/or any needed information verification.
- (e) The Parties shall cooperate with one another to provide any follow-up information that may be necessary and/or any needed information for verification, including verification of subscriber status for any Participant. Upon receipt of the Participant Credit Payment, Cox shall apply the Participant Credit Payment for the applicable month to each Participant, and such application shall take place in the manner set out in Section 3(a) below. The Parties acknowledge that some Cox accounts may be under a family name and Cox will apply the Participant Credit Payment based solely on the Required Participant Information provided by the District. Cox will work with District in good faith to update any incorrect Participant Information provided by the District. Cox shall have no liability to District in connection with the failure to apply, or incorrect application of, Participant Credit Payments as a result of any incomplete or incorrect information provided by District provided that Cox will in every such circumstance correct any error or incorrect application following notice thereof.
- (f) For each successive month during the Term of this MOU, District shall deliver to Cox, on or before the 20th of each calendar month, the updated Required Participant Information for such month. If Cox does not receive updated Required Participant Information prior to the 20th of the applicable month, Cox will assume the information is unchanged and will deliver an invoice to District based on the existing Participant Information.

3. Payments and Credits.

- (a) Participant Credit Payment. District shall deliver to Cox on or before the due date listed on the Cox Invoice, certain funds to cover the cost of credits that are distributed to each Participant listed in the Required Participant Information delivered to Cox during the prior month (the "Participant Credit Payment") at the time the current month Cox invoice was issued. The Participant Credit Payment shall be due on or before the due date set forth on Cox's invoice and shall be either directly deposited into Cox's bank account pursuant to instructions to be delivered to District promptly following the execution of this Agreement or paid by check in US dollars and mailed to Cox at the address listed on the Cox Invoice. Within thirty (30) days after receipt and verification of the Participant Credit Payment, Cox

shall apply to the payment to Cox account. Cox shall promptly respond to any request from Cox for assistance in working through any issues or problems in reconciling that Participant Credit Payment with the related Required Participant Information.

- (b) Free or Discounted Services Period. In the event Cox publishes offers that include free or discounted home internet services, Cox agrees that Cox may reduce, at its sole discretion, the amount of credit issued to the Participant's account. Cox and District shall work together in good faith to determine which Participants shall be eligible for the Participant Credit Payment during any such free services periods if Cox does not want credits applied during such periods.
 - (c) Determination of Participant Credit Payment. Cox shall cooperate with District to determine the amount of the Participant Credit Payment for each Participant (the Parties agreeing that different Participant Credit Payments may be applied to each Participant), and Cox shall confirm such amount as part of the Required Participant Information.
4. Current Cox Customers. For clarification purposes, any designated Participants who already have an account with Cox for the purchase of home internet services as of the date of this MOU, shall, so long as District has provided Cox with the Required Participant Information, receive such Participant's portion of the Participant Credit Payment as set forth above.
5. Internet Terms.
- (a) Internet Speed. The Internet Speed provided to the Participants may vary and will be determined in accordance with the terms and conditions of the Program and/or the applicable residential internet package purchased by the Participant.
 - (b) Internet Equipment/Terms of Service. District acknowledges that each Participant shall be subject to all applicable terms, conditions and policies of Cox Services to which such Participant subscribes, including without limitation, the Cox Residential Customer Services Agreement, Annual Privacy Notice, Acceptable Use Policy and all other terms and conditions set forth at www.cox.com. Furthermore, in accordance with such terms and conditions, the Participants may be charged for lost or damaged equipment, and the Participant's service(s) may be terminated as a result of the failure to abide by any of the terms and conditions for such services or in the event the Participant is no longer an active student in District's school system. Participation in the District Reimbursement Program shall not constitute a waiver of any of the foregoing by Cox. District will in no event be responsible for any equipment that is lost or damaged by a Participant.
6. Default. Failure by District to timely pay any invoice from Cox will be deemed a default by District under this MOU in the event that District does not cure the default within 30 days of written notice of said default. Cox shall have the right to apply its standard late fee to any late payments by Subscribers. Furthermore, in the event that District fails to cure any invoice within the specified time period as stated in this Paragraph, in addition to any available remedies at law or in equity, Cox shall have the right to terminate this Agreement with notice provided to District 30 days prior to termination.
7. Termination without Cause. This MOU may be terminated for any reason by either Party by giving at least ninety (90) days' written notice to the other Party. Any Participant Credit Payment made prior to such termination shall be non-refundable and shall be applied to Participant accounts as set forth above. District agrees to pay Cox for any invoice issued prior to termination. Cox agrees not to charge District or Participants any termination fees in connection with the termination of this MOU. Immediately upon the receipt (or giving) of a termination notice hereunder, District shall promptly inform all Participants in writing of the pending termination of this MOU, the date of such

termination, notification that the Participant will continue to receive Cox services at the Participant's sole cost upon such termination, and instruction that payment obligations will continue to accrue unless the Participant terminate the services directly through Cox. Participants will have the option to continue to receive Cox services under the Program or as a regular purchase of home internet services at the Participants sole cost and expense, as applicable, or to terminate such services without payment of a termination fee. If a Participant does not cancel its Cox services, then upon the expiration of the Reimbursement Program, the Participant will be charged for the full amount of its home internet subscription for as long as the subscription remains in effect. District acknowledges that Cox shall have the right to terminate a Participant's services in the event such Participant fails to pay for its portion of the costs for the Cox services. In addition, upon termination of this MOU, Cox may notify the Participants of any additional information required to retain the Cox home internet services.

8. **Information Sharing.**

- (a) District shall transmit physical records using appropriate security methods and ensure that transmission of digital records of such information is password protected and only shared with necessary individuals. Cox agrees they will not transmit any personally identifiable information (PII) through email.
- (b) Cox shall be prohibited from using any information shared pursuant to this MOU for any purpose other than to effect the purposes of this MOU and shall treat all Participant Information provided to Cox by District as confidential.

9. **Indemnification/Waiver of Liability.** Subject to Section 17 below and to the extent permitted under applicable law, each Party shall indemnify, defend, and hold the other Party, and its respective directors, officials, officers, employees, agents, consultants and contractors (collectively, the "Indemnified Parties") free and harmless from any and all third party claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries for tangible property damages or personal injury including wrongful death (collectively, "Claims"), arising out of the gross negligence or willful misconduct of the Party providing the Indemnity. The foregoing indemnification shall exclude any Claims to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Furthermore, in no event shall Cox be liable to District for arising from (i) District's failure to pay all or any portion of the Participant Credit Payment; (ii) Cox's termination of any Participant's services as a result of the breach by such Participant of the applicable service agreement; (iii) any interruption of the Cox home internet services for any reason; (iv) District's provision of any incorrect or incomplete Required Participant Information or its failure to respond to Cox's request for updated or additional information; (v) any fraud by District, its employees, officers or agents in connection with the use of any public funds in connection with the Reimbursement Program; or (vi) the violation of any applicable laws, rules or regulations, including without limitation, any claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, or The Americans With Disabilities Act of 1990, as amended; and to the extent permitted by law, District hereby indemnifies and holds Cox harmless from any Claims arising from the foregoing.

10. **Notices.** All written notices to be given under this MOU shall be given by first class mail, personal delivery, nationally recognized overnight courier or at such address as the Party may provide to the other Party in writing from time to time. Notice shall be deemed given upon actual delivery or refusal of same, or in the case of email, upon acknowledgement by the recipient of receipt of such notice. The Parties may, by written notice to the other Parties, from time to time modify the address or number to which communications are to be given hereunder.

If to District:

Fairfax County Public Schools
8115 Gatehouse Road -- Fifth Floor
Falls Church, VA 22042
Dr. Michelle Reid
Division Superintendent

If to Cox:

CoxCom, LLC
6205-B Peachtree Dunwoody Road
Atlanta, GA 30328
Attn: Executive Director of Internet Product

with a copy to:

Division Counsel
Fairfax County Public Schools
8115 Gatehouse Road—Fifth Floor
Falls Church, VA 22042

with a copy to:

Cox Communications
6205-B Peachtree Dunwoody Road
Atlanta, GA 30328
Attn: VP- Legal Operations

And

Cox Communications
6205-B Peachtree Dunwoody Road
Atlanta, GA 30328
Attn: Billing and Payment Strategy

11. **Amendment.** No modification, waiver, amendment, discharge or change of this MOU shall be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.
12. **Binding Effect.** This MOU shall be binding upon and inure to the benefit of the Parties and their respective heirs, administrators, representatives, successors and assigns.
13. **Governing Law.** This MOU shall be governed by and construed with the laws of the Commonwealth of Virginia.
14. **Validity of MOU.** The invalidity in whole or in part of any provision of this MOU shall not void or affect the validity of any other provision of this MOU.
15. **Counterparts.** This MOU may be executed in multiple counterparts and by electronic signature, each of which shall be deemed an original and together which shall constitute one and the same instrument.
16. **Entire Agreement.** This MOU constitutes the entire agreement between the Parties with respect to the Reimbursement Program. In the event of a conflict between this MOU and any other agreement between the Parties, this MOU shall control with respect to the Program.
17. **LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES IN CONNECTION WITH THIS MOU. EXCEPT AS PROVIDED IN THIS MOU, THERE ARE NO MOUS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO COX'S SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT ANY SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. COX DOES NOT**

GUARANTEE THAT SERVICE CAN BE PROVISIONED TO PARTICIPANT'S LOCATION, OR THAT INSTALLATION OF SERVICE WILL OCCUR IN A SPECIFIED TIMEFRAME. COX DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT WILL MEET PARTICIPANT'S NEEDS, PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE, OR WILL BE UNINTERRUPTED, ERROR-FREE, SECURE, OR FREE OF VIRUSES, WORMS, DISABLING CODE OR THE LIKE. INTERNET AND WIFI SPEEDS WILL VARY. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.

[EXECUTED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the date first herein above written.

DISTRICT:

Fairfax County School Board

DocuSigned by:
Michelle Pratt
By: C14D4C9B7D1F40F1
Print Name/Title: Michelle Pratt Director, Procurement
Date: 4/25/2024

COX:

Cox Virginia Telecom, LLC.

DocuSigned by:
Eddie Jenkins
By: D50380E2F5E3421... ins
Print Name/Title: VP, Cox Business Virginia
Date: 4/2/2024, 2024