

**TO:** Dr. Scott Helton  
Board of Education

**DATE:** September 3, 2020

**FROM:** Mr. Edward Hoster

**RE:** **Internet Essential Partnership Program**

As of August 26, 2020, the DuPage County Board, in partnership with the DuPage County Regional Office of Education, approved a \$1.5 million commitment to provide low-income students with internet service as described below:

*Under the agreement, school districts will find appropriate vendors to provide internet service at no cost to low-income students, and all or some of the costs will be reimbursed by the Regional Office of Education. Many school districts throughout the County have moved to remote learning during the COVID-19 pandemic.*

*“We want to remove barriers to learning. Too many students in DuPage do not have the connectivity and internet access they need to fully participate in remote learning programs. As schools adhere to the updated public health guidance, it is essential that we help families connect easily to their schools and teachers so that learning can continue seamlessly whether they are at home or in classrooms,” said DuPage Regional Superintendent Dr. Darlene Ruscitti.*

The program will be funded from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and available for reimbursement through December 15, 2020.

One of the key partners in this program is Comcast who will be providing the terms of agreement for a school district to enroll. The district would be the responsible party for making the monthly payments on behalf of those students/families that enroll and qualify for this program. This is a hardwire solution provider as opposed to the mobile hot spot internet solutions available in the market. The framework of this partnership is that Comcast will provide for unlimited data internet service for \$9.95 per month (plus applicable taxes/fees) and in return the DuPage County/ROE will reimburse the district for up to \$8.00 per month for a maximum ten (10) months or \$80.00. Therefore, there would still be some local funding for this service but it would be less than what we are currently paying for the T-Mobile hot spots at \$20 per device/per month. Students will only qualify for this program if approved as eligible for free or reduced-price meals. The term of this program can be either 6 or 12 months, but all invoicing would need to be completed, paid and submitted for reimbursement by no later than December 15, 2020 to receive the funding.

This program would be an alternative to the recently approved twelve (12) month agreement to purchase internet hot spot connectivity from T-Mobile at \$20.00 per month/per device for unlimited data. However, this program is also eligible for the \$8.00 per month/\$80.00 per ten (10) month reimbursement program in accordance with the same student eligibility criteria. We currently have 240 devices distributed of which 200 are students that qualify for this reimbursement program from the county. Given that the prior five-year free internet service from the non-profit Sprint affiliated program is being phased out through April 2022, there is a need for a cost-effective long-term solution for these students. The most recent spring 2020 Sprint free device usage indicated that approximately 300 students were active users. At this time, we recommend a trial basis of 12 months with the Comcast Internet Essentials Program in anticipation of a plan for the following school year that we could transition to. We have confirmation from Comcast that this service provides the required Child Internet Protection Act (CIPA) type filtering via their xFi parental controls app at no additional cost to the family with this promotion. Given that all new Comcast program enrollments would need to be completed by the first week of November 2020 and billed by the end of November, we are recommending board consideration and approval at this next meeting.

### **Suggested Motion**

Move that the Board of Education authorize the administration to complete the Internet Essentials Agreement with Comcast for a twelve (12) month term.

# Agreement

**1. Agreement.** This Agreement (the “Agreement”) is entered into as of **September 14, 2020** (the “Effective Date”) and is made by and between Comcast Cable Communications Management, LLC (“Comcast”) and **DuPage High School District 88** (“Sponsor”) and sets forth the terms and conditions under which Comcast, or its operating Affiliate, will provide Service to certain people that (i) provide Comcast with a unique identifier described in Section 3 below (“End User(s)”) and (ii) Comcast has verified and approved.

## 2. Definitions:

“**Affiliate**”: means an entity that controls, is controlled by, or is under common control with a party.

“**Comcast Equipment**”: means any and all facilities, equipment, or devices provided by Comcast or its agents used to deliver the Service, including, but not limited to, cable modems and wiring.

“**End User Application**”: means an End User’s application (that contains the unique identifier described in Section 3 below) for the Service that has been approved by Comcast, in its sole discretion.

“**Promotional Period**”: means that 60-day period, commencing on the Service Commencement Date, for which

“**Sponsor**”: will not be charged the monthly service fee for the Service.

“**Service**”: means XFINITY® Internet Essentials service with download speeds of up to 25.0 Mbps and upload speeds of up to 3.0 Mbps.

“**Service Commencement Date**”: means the date when the End User installs the Comcast Equipment and Comcast makes the Service available for use by each End User(s).

“**Service Location(s)**”: means the individual End User(s) residential location(s) to which the Service will be provided by Comcast.

## 3. Delivery of the Service.

**3.1 Service Delivery.** Comcast will provide Sponsor with the number of promotional codes (“Codes”) requested by Sponsor and each Code will be unique and one-time use only. End Users who receive a Code from Sponsor should either visit [www.InternetEssentials.com](http://www.InternetEssentials.com) or call 1-855-8 INTERNET to apply for the Service. If an End User provides Comcast with a Code that Comcast provided to Sponsor, is eligible for Internet Essentials, and agrees to the terms and conditions required by Comcast to receive Service, Comcast will work with the End User to get the Service to the Service Location and begin to invoice Sponsor for each End User’s Service in accordance with Section 4 below.

**3.2 Prohibited Uses.** Sponsor shall cause all End User(s) to comply with this Agreement, including, but not limited to the then current version of the Acceptable Use Policy (“AUP”), which can be accessed via the following URL: <https://www.xfinity.com/corporate/customers/policies/highspeedinternetaup>.

## 4. Billing and Payment.

**4.1 Payment.** Comcast will invoice Sponsor on a monthly basis for all charges and fees arising under this Agreement. Except for the Promotional Period where new End Users who have an End User Application approved by Comcast on or before December 31, 2020 to receive the first two months of Service free, Sponsor shall pay Comcast a monthly recurring charge of \$9.95 per month (plus applicable taxes) for each End User(s) that receives Service commencing on the Service Commencement Date. Sponsor shall be billed each month based upon the actual number of End User(s) for which Comcast has made the Service available, as determined by Comcast prior to the upcoming invoice cycle. Sponsor agrees to pay all undisputed charges and fees within thirty (30) days of the invoice date. Any such undisputed amounts not paid to Comcast within such period will be considered past due.

**4.2 Taxes and Fees.** Except for taxes based on Comcast’s net income, and except to the extent Sponsor provides a valid tax exemption certificate prior to the delivery of Service, Sponsor shall be responsible for the payment of any and all applicable federal, state and local taxes, fees or assessments (however designated) levied upon the sale, installation, use or provision of the Service.

**4.3 Disputed Invoices.** In the event Sponsor disputes charges and fees for the Service, Sponsor must pay the undisputed portion of the invoice and submit a claim for the disputed amount. All claims with respect to withheld amounts must be submitted to Comcast by calling Comcast’s National Accounts Billing Support at 866-511-6489. Comcast will make commercially reasonable efforts to address the disputed charges and fees within sixty (60) days.

**4.4 Past-Due Amounts.** Comcast reserves the right to charge interest at a rate of one and a half percent (1.5%) per month, or the highest rate allowed by law, whichever is less (prorated on a daily basis beginning on the past-due date) for the unpaid balance of any past due invoice that is not reasonably disputed in the manner set forth in this Agreement. Comcast's acceptance of partial payment shall not constitute a waiver of Comcast's right to collect the full balance owing, and, Comcast reserves the right to determine the manner in which partial payments are applied. Sponsor agrees to pay all reasonable costs of collection incurred by Comcast as a result of Sponsor's failure to pay undisputed amounts due under this Agreement.

**5. Term.** This Agreement shall become effective on the Effective Date. The term of this Agreement shall commence on the Effective Date and continue for a period of **one year** (the "Term"), unless earlier terminated in accordance with the terms set forth herein. Sponsor hereby agrees to pay the Service Fees (as defined in Section 4 hereof) for each End User who receives Service prior to the expiration of the Term for a period of 1 **year** from the Service Commencement Date (each, the "End User Term") and the terms of this Agreement shall extend to the provision of Services to each End User until the expiration of the End User Term. Sponsor may extend the Term of the Agreement for an additional one **year** period by providing Comcast with at least 60 days' written notice prior to the expiration of the Term of its extent to extend the Term.

**6. Default by Sponsor.** If Sponsor is in breach of a payment obligation (including failure to pay a required deposit) and fails to make payment in full within ten (10) days after receipt of a second written notice, Comcast may, at its sole discretion, terminate this Agreement, terminate or suspend Service to End User(s), and/or require a deposit, advance payment, or other satisfactory assurances as a condition of continuing to provide Service; except that Comcast will not take any such action as a result of Sponsor's nonpayment of a charge subject to a timely dispute, unless Comcast has reviewed the dispute and determined in good faith that the charge is correct. This Agreement may be immediately terminated by either Party, upon written notice, if the other party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.

## **7. Termination.**

**7.1 Termination of a Service to End User(s) for Cause.** If an End User(s) breaches the AUP, as determined by Comcast, at its sole discretion, Comcast may, at its sole discretion, either suspend or terminate Service to the applicable Service Location(s) upon providing Sponsor with notice of such termination.

**7.2 Regulatory and Legal Changes.** Notwithstanding any contrary provision of this Agreement, if Comcast's authority to provide Service to a Service Location(s) is terminated, cancelled, or expires, Comcast may terminate this Agreement or the affected End Users' Service.

## **8. Limitation of Liability.**

**8.1** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, COMCAST DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, COMCAST DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES WILL MEET SPONSOR'S REQUIREMENTS, OR THAT THE SERVICES WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES.

**8.2** EXCEPT IN THE CASE OF A BREACH OF CONFIDENTIALITY AS SET FORTH IN SECTION 9.1, OR BREACH OF THE PROVISIONS OF SECTIONS 9.3, 9.4, 9.5 AND 9.6, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR LOST REVENUES) ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. Confidential Information.**

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**9.1 Disclosure Use and Exceptions.** “Confidential Information” means any non-public information regarding a party’s business which has been marked or is otherwise communicated as being “proprietary” or “confidential,” or which should be reasonably known by the receiving party as proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include this Agreement, proposals, price quotes, rate information, discount information and invoices and Comcast Personal Information, as defined below. All Confidential Information and Comcast Personal Information as defined herein disclosed by either party shall be kept by the receiving party in strict confidence and shall not be disclosed to any third party without the disclosing party’s express written consent. Notwithstanding the foregoing, such information may be disclosed (i) to the receiving party’s employees, affiliates, agents and volunteers who agree to keep the Confidential Information confidential and who have a need to know for the purpose of performing this Agreement, installing the Comcast Equipment, using the Services, and rendering the Services (provided that the receiving party shall take appropriate measures prior to disclosure to its employees, affiliates, and agents to assure against unauthorized use or disclosure) or (ii) as otherwise authorized by this Agreement. Each party agrees to treat all Confidential Information of the other in the same manner as it treats its own proprietary information, but in no case will the degree of care be less than reasonable care. Notwithstanding the foregoing, and except for Comcast Personal Information, each party’s confidentiality obligations hereunder shall not apply to information that: (i) is already known to the receiving party without a preexisting restriction as to disclosure; (ii) becomes publicly available without fault of the receiving party; (iii) is rightfully obtained by the receiving party from a third party without restriction as to disclosure, or is approved for release by written authorization of the disclosing party; (iv) is developed independently by the receiving party without use of the disclosing party’s Confidential Information; or (v) is required to be disclosed by law or regulation.

**9.2 Remedies.** Notwithstanding anything to the contrary in this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this section, including, but not limited to, preliminary and permanent injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the parties with respect to breaches of the duties imposed by this section.

**9.3 Survival of Confidentiality Obligations.** Except for Sponsor’s obligations with respect to Comcast Personal Information as set forth in Section 9.5 below, which survive termination of this Agreement indefinitely, the obligations set forth in this section shall survive the expiration or termination of this Agreement for a period of two (2) years.

**9.4 End User Privacy.** To enable Sponsor’s payment obligations hereunder, and so that Sponsor is able to verify End Users eligible for Sponsorship, Comcast may disclose Comcast Personal Information of End Users to Sponsor. “Comcast Personal Information” means any information provided by Comcast to Sponsor that relates to or describes an individual or household, including any such data that is linked or linkable to an individual, household, or device. Without limiting the foregoing definition of “Comcast Personal Information,” the Comcast Personal Information includes, but is not limited to, End User name, address, phone number, Service account number and amount of monthly charges shown in an invoice and related to an End User. Sponsor may not (a) Sell Comcast Personal Information; (b) retain, use, or disclose Comcast Personal Information for any purpose other than for the specific purposes set forth in this Agreement. For the purposes of this Agreement “Sell” means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Comcast Personal Information by one entity to another for monetary or other valuable consideration.

**9.5 Security.** Sponsor shall employ, with regard to Comcast Personal Information that it receives from Comcast, procedures no less restrictive than the strictest procedures used by Sponsor to protect its own confidential and proprietary information of a like kind, which shall at a minimum be commercially reasonable procedures using Industry Standard information security measures. “Industry Standard” means prescribed for use by the National Institute of Standards and Technology or aligned with the International Organization for Standardization/International Electrotechnical Commission 27000 series of standards. Sponsor must maintain a plan for appropriate security incident management and response that complies with the terms of this Agreement to cover, at a minimum, the following: (i) unauthorized access, acquisition, disposition use of Comcast Personal Information, (ii) other loss or misuse of such information or (iii) discovery malware posing a significant threat to such information or any operations necessary to perform under this Agreement (each, a “Security Incident”). Sponsor

must provide notification via electronic mail to [SecurityFusionCenter@comcast.com](mailto:SecurityFusionCenter@comcast.com) of a Security Incident as soon as practicable after, but not later than, twenty-four (24) hours, following awareness of a Security Incident. For any Security Incident, Sponsor must provide regular updates to [SecurityFusionCenter@comcast.com](mailto:SecurityFusionCenter@comcast.com) or, if direct by Comcast, to a security point of contact specifically designated by Comcast for the Security Incident, and shall cooperate with Comcast or its regulators in its efforts to investigate the same. Comcast shall exclusively control the provision and content of any notices to End Users or applicable entities with respect to any Security Incident involving Comcast Personal Information.

**9.6 Retention, Return or Destruction of Personal Information.** Sponsor shall not retain Comcast Personal Information received from Comcast for a period longer than 90 days from receipt unless required to do otherwise by applicable law or legal obligation. Upon expiration or termination of this Agreement, or at Comcast's request, Sponsor will return all Personal Information to Comcast or, at Comcast's request, securely destroy all Comcast Personal Information and provide within ten (10) days of Comcast's request, a written attestation signed by an officer of the Sponsor, attesting that all Comcast Personal Information in all formats, including without limitation, paper, electronic and disk form, have been returned or securely destroyed, provided however, that foregoing obligation shall not extend to backup or archival copies of Personal Information that Sponsor generates in the ordinary course of business. Sponsor shall not process or use backed-up or archived Comcast Personal Information for any purpose other than to store it, and Sponsor will continue to apply security controls consistent with this Agreement to such Comcast Personal Information for the duration of its storage.

**9.7 Sponsor Relationships.** Sponsor must require all of its subcontractors with access to Confidential Information to comply in writing with security obligations substantially similar to this Agreement and shall provide written attestation or other evidence that affirms such compliance to Comcast promptly upon request. Sponsor shall conduct periodic reviews of such subcontractors' security controls to confirm that such controls are in compliance with this Agreement. In the event Sponsor identifies deficiencies in any such subcontractor's security controls, Sponsor shall maintain a report of such findings and ensure that such deficiencies are remediated within reasonable timeframes, commensurate with their severity.

**9.8 Audit Rights.** Sponsor shall reasonably cooperate with Comcast's efforts to verify Sponsor's compliance with this Section, which efforts may include periodic audits (not to exceed one (1) audit in any twelve (12) month period) of Sponsor's operations, including onsite validation at a Sponsor facility, by Comcast or a third party at Comcast's request and on reasonable notice, and Sponsor will remediate any critical security issues discovered by Comcast within thirty (30) days, and provide a commitment to Comcast within thirty (30) days to address any other security issues in a timely manner.

**9.9 Restricted Activities.** Sponsor represents that, during the term of this Agreement, neither Sponsor, nor its employees, agents, or subcontractors, will (i) with the exception of Service account number, access, transmit, collect, process, and/or store (collectively, "handle") Sensitive Non-Public Information, (ii) access Comcast Systems or (iii) engage or provide any software development, web application development and/or web application hosting services (collectively, "Restricted Activities"). If Sponsor, or any individual or entity acting in any capacity on behalf of or under the direction of Sponsor, becomes aware that it is in engaging in any Restricted Activity, Sponsor will immediately contact Comcast and comply with Comcast's instructions, which may include, without limitation, destruction or return of Sensitive Non-Public Information. If the Sponsor will need to engage in one or more Restricted Activities, Sponsor shall not proceed unless and until the parties amend this Agreement to include Comcast's then-current information security requirements applicable to such Restricted Activities. "Sensitive Non-Public Information" means any information for which the loss of confidentiality, integrity, or availability of such information could be expected to have a severe, adverse effect on Comcast's operations, organizational assets, or individuals and includes, but is not limited to, Proprietary application source code, pre-release financial statements, access and credential data for any Comcast System; and Sensitive Personal Information. "Sensitive Personal Information" means Personal Information that, if subject to unauthorized access or acquisition that compromises the security, confidentiality, or integrity of the personal information, could require notification to a consumer, governmental entity, credit reporting agency, or trigger any other state, federal, or international breach notification laws, and includes, without limitation, Social Security number(s), driver's license number(s), state identification



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number(s), passport number(s), or other government issued identification number(s); financial or bank account information, including payment card data; health or medical insurance information; health or medical conditions; Protected Health Information, as defined in Section 164.103 of the Health Insurance Privacy and Portability Act's implementing regulations; information collected by automated license plate recognition systems; set-top box or other device data, network event data, usage data or activity data generated by a Comcast customer's interaction with any content distributed by or on a Comcast System, or made available by Comcast, information about Comcast customer's visit to (or failure to visit) any website or application; biometric information; password(s) or security questions and answers; and the personal information of individuals residing outside the United States. "Comcast Systems" means applications, websites, computing assets, systems, databases, devices, products, or services owned or operated by or for Comcast.

## 10. Miscellaneous Terms.

**10.1 Force Majeure.** Neither party nor its affiliates, subsidiaries, or contractors shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, explosion, power blackout, or other causes beyond the party's reasonable control, except that Sponsor's obligation to pay for Services during a force majeure condition shall not be excused.

**10.2 Assignment or Transfer.** Neither party may assign this Agreement in whole or in part, or delegate any of its duties or obligations thereunder, without the prior written consent of the other party, except that without such consent (i) either party may assign this Agreement to a successor (by purchase, merger, operation of law, or otherwise) to all or substantially all of its business; and (ii) either party may assign this Agreement to an Affiliate, provided such entity agrees in writing to be bound by the terms hereof. Any purported assignment in contravention of this section shall be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of any permitted successors or assigns. Nothing herein is intended to limit Comcast's use of third-party consultants and contractors to perform the Services.

**10.3 Publicity.** This Agreement provides no right to use any party's or its affiliates' trademarks, service marks, or trade names, or to otherwise refer to the other party in any marketing, promotional, or advertising materials or activities. Neither party shall issue any publication or press release relating to, or otherwise disclose the existence of, the terms and conditions of any contractual relationship between Comcast and Sponsor, except as permitted by this Agreement or otherwise consented to in writing by the other party.

**10.4 Notices.** All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, United States Postal Service, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested. If notices are sent to the Sponsor, they shall be sent to [REDACTED] 2 Friendship Plaza, Addison IL, 60101, Attn: [REDACTED]. If notices are sent to Comcast, they shall be sent to One Comcast Center, Philadelphia, PA 19103 Attn: General Counsel.

**10.5 Entire Understanding.** This Agreement constitutes the entire understanding of the parties related to the subject matter hereof. This Agreement supersedes all prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning the Service or the parties' rights or obligations relating to the Service.

**10.6 Construction.** In the event that any portion of this Agreement is held to be invalid or unenforceable, the parties shall replace the invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

**10.7 Survival.** The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement shall survive termination or expiration of this Agreement.

**10.8 Governing Law and Venue.** This Agreement shall be interpreted and enforced in accordance with the laws of

the Commonwealth of Pennsylvania without regard to its conflict of laws principles.

**10.9 No Third Party Beneficiaries.** This Agreement does not expressly or implicitly provide any third party (including End User(s)) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

**10.10 No Waiver; Etc.** No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s). This Agreement may be executed in counterpart copies.

**10.11 Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state and federal laws and regulations and ordinances in the performance of its respective obligations under this Agreement.

**Accepted and agreed to as of the date shown below.**

**Comcast**

\_\_\_\_\_  
Name:  
Title:  
Date:

**Sponsor**

\_\_\_\_\_  
Name:  
Title:  
Date: