

SchoolPointe Website Contract  
For  
Gallatin County School District

Term: 5

Subscription Start Date: 7/1/2011  
Subscription End Date: 6/30/2016



## **SCHOOLPOINTE WEBSITE DEVELOPMENT AGREEMENT**

**THIS WEBSITE DEVELOPMENT AGREEMENT** (this "Agreement") is dated as of April 28, 2011 by and between IndexBlue, Inc., an Ohio corporation ("INDEX"), located at 3248 W. Henderson Rd., Ste. 100, Columbus, OH 43220, and the Gallatin County School District, a school district organized under the laws of the State of Kentucky, located at 75 Boardwalk Warsaw, KY 41095("DISTRICT"). Collectively referred to as the "Parties."

**1. Term.** The term of this Agreement shall be for a period of 5 years and will commence on July 1, 2011 and shall remain in force until June 30, 2016 except as otherwise provided in this Agreement. This Agreement will automatically renew for successive one (1) year periods if DISTRICT does not notify INDEX of their intent to discontinue services ninety (90) days prior to the expiration of the then current term.

**2. Services.** INDEX agrees to develop, implement, and maintain a website for DISTRICT as set forth in the original proposal to DISTRICT (Appendix A), including the development of all software for the website (the website and all software development in connection therewith are hereinafter together referred to as the "DISTRICT Website").

**3. Payments.**

(a) For the services rendered hereunder, DISTRICT agrees to pay INDEX the total amount of 15,000.00 for the (5) Five payments. DISTRICT will make five (5) annual payments to INDEX in the amount of 3,000.00 on each of the following dates:

<b>SERVICE YEAR</b>	<b>PAYMENT AMOUNT</b>
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7/1/2011:	\$3,000.00
7/1/2012:	\$3,000.00
7/1/2013:	\$3,000.00
7/1/2014:	\$3,000.00
7/1/2015:	\$3,000.00

(b) INDEX will provide DISTRICT with invoices of the current services being provided at the time the invoice is generated.

(c) The foregoing payments provide for ten (10) hours of new development services each service year during the term of the Agreement. These hours will not be carried over from one service year to the next. In the event that requested services by DISTRICT exceed ten (10) hours in one service year INDEX will invoice DISTRICT at \$85 per additional hour. Further, INDEX will not charge DISTRICT for any service overages without first notifying and obtaining approval from DISTRICT before the work begins. In the event that services are completed by INDEX without obtaining approval from DISTRICT then DISTRICT will not be invoiced for the services that caused the overage in the hours.

(d) Optional modules and services may be requested by DISTRICT at any time. The payment schedule and amounts will be modified accordingly.

(e) A late fee in the amount of five percent (5%) of payment due may be assessed to any payment not received by the due date hereunder.

**4. Cooperation.** Both INDEX and DISTRICT acknowledge and agree that successful development and implementation of the DISTRICT Website so as to become operational in DISTRICT's specified domain shall require their full and mutual good faith cooperation, including, without limitation, the fulfillment by DISTRICT of the obligations set forth in Section 6.

**5. INDEX Obligations.** In addition to providing DISTRICT with full, good faith cooperation and such information as may be required by INDEX in order to develop and implement the DISTRICT Website, INDEX shall:

(a) not sell advertising space on the DISTRICT's web site. Nothing in this Agreement prohibits the sale of advertising by the DISTRICT or the use of District web pages to recognize sponsorship of DISTRICT programs.

(b) act or refuse to act such that its actions must uphold FERPA, COPPA, the DISTRICT's state privacy laws, and all other State and federal regulations regarding the privacy of staff, students and faculty. INDEX is only responsible for its own actions, and is not responsible for content uploaded or content and/or practices specifically authorized by DISTRICT personnel.

(c) provide data security consistent with standard practices in the industry, and will not provide any DISTRICT data to a third party or make any use of such data whatsoever outside of the use provided for in this agreement without the express written permission of the DISTRICT. INDEX will immediately inform the DISTRICT of any security breaches involving DISTRICT data, and will fully cooperate with the DISTRICT's Director of Technology in investigating and defending against intrusions into the DISTRICT system that involve INDEX servers or networks. The DISTRICT will avoid, where possible, transmission of any data to INDEX that is confidential.

(d) assist the DISTRICT in complying with the DISTRICT's state public records laws, records retention legislation, and other applicable laws and regulations. The DISTRICT will respond to any such requests, with INDEX's cooperation if necessary. INDEX will immediately notify the DISTRICT of any request made directly to it for DISTRICT data. INDEX will archive changes to the DISTRICT's web sites consistent with DISTRICT's policy on records retention.

(e) insure that the 10 hours of support in the agreement is for new implementation or enhancements of the site, including miscellaneous data cleanup tasks. New versions, routine quarterly updates, site outages, error corrections and other malfunctions not caused by the District will not count toward those 10 hours.

(f) insure that, should a large-scale downtime event occur, defined as a Severity "0" event in the proposal (Appendix A) lasting more than 12 hours, INDEX will decrease the annual payment by a pro-rated amount for each calendar day that the Severity "0" condition exists. A Severity "0" event lasting more than 7 days will be cause for termination of the agreement by the DISTRICT.

**6. DISTRICT Obligations.** In addition to providing INDEX with full, good faith cooperation and such information as may be required by INDEX in order to develop and implement the DISTRICT Website, DISTRICT shall:

(a) provide INDEX with specific and detailed information concerning DISTRICT's work flow, procedures and transaction volumes as they relate to applications of the DISTRICT Website;

(b) make available to each INDEX agent located on DISTRICT's premises test time on the system configuration designated by INDEX, which availability shall include sufficient disk storage space to permit INDEX to develop and test the DISTRICT Website, and access to the system configuration through at least one dedicated terminal for each INDEX agent at DISTRICT's premises;

(c) set up, format, and make available to INDEX the files and tables specified by INDEX;

(d) make available to INDEX, personnel of DISTRICT for testing the DISTRICT Website and training users of the DISTRICT Website;

(e) provide one employee of DISTRICT to act as coordinator of all DISTRICT activities in connection with the development of the DISTRICT Website, and to supervise all projects undertaken by DISTRICT in connection with the modification, preparation, installation or use of the DISTRICT Website;

(f) in general, to provide all information and access to key personnel needed to develop and implement the DISTRICT Website.

**7. Termination with Cause.** In the event that DISTRICT is unable to attain e-rate funding the contract shall terminate without penalty to either party. DISTRICT has a duty to take all reasonable steps necessary to attain e-rate funding.

(a) violation or breach, by its officers or employees, of any provision of this Agreement, including, but not limited to, confidentiality and payment; In the event that there is a breach of this Agreement the breaching party will have sixty (60) days from the receipt of the notice of the breach to cure the breach. If the condition has been satisfactorily resolved this Agreement will remain in force;

(b) the termination of the business;

(c) voluntary or involuntary filing of a bankruptcy petition or similar proceeding under state law; or

(d) becoming insolvent or making any assignment for the benefit of creditors. Notwithstanding termination of this Agreement, the obligations of the parties contained in Sections 3, 9-12 inclusive, 16, and 19 shall survive the termination of this Agreement and continue in perpetuity.

**8. Termination without Cause.** In the event that DISTRICT terminates this Agreement without cause, DISTRICT will be responsible to pay INDEX liquidated damages, not to be construed as a penalty, in the amount of 50% of the sum of all of the remaining payments as described in Section 3 of this Agreement.. Any such payments must be received within ten (10) days of the proposed date of termination. If such payment is not received, the termination notice will be considered void and the contract, along with all regularly required payments, will remain in full force and effect until all payments due under this are contract received.

**9. Contingency.** In the event the DISTRICT is in default under this Agreement because:

(a) Funds are not appropriated for a fiscal period subsequent to the one which the Agreement was entered into which are sufficient to satisfy all of DISTRICT's obligations under the Agreement during said fiscal period;

(b) Such non-appropriation did not result from any act or failure to act of DISTRICT;

(c) DISTRICT has exhausted all funds legally available for all payment due under the Agreement; and

(d) There is no other legal procedure by which payment can be made to INDEX,

Then, provided that (1) DISTRICT has given INDEX written notice of the occurrence of paragraph (a) above thirty (30) days prior to such occurrence; (2) INDEX has received a written opinion from DISTRICT's counsel verifying the same within ten (10) days thereafter; and (3) the DISTRICT does not directly or indirectly purchase, lease or in any way acquire any services or equipment supplied or provided for hereunder, INDEX's remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the services as INDEX in its sole discretion may desire, without any duty to account to DISTRICT.

**10. Contract Period.** This contract will be effective from July 1, 2011 to June 30, 2016 in accordance with the terms of this AGREEMENT. This contract may be extended at the completion of the initial contract period for additional one-year periods until July 1, 2017 running in correlation with the original contract period. The DISTRICT may cancel this AGREEMENT by giving written notice to INDEX ninety (90) days prior to the effective cancellation date.

**11. Title to Software.** INDEX and the DISTRICT agree that the software code used to operate the DISTRICT Website under this Agreement is the sole property of INDEX. Both parties also agree that all data entered into the DISTRICT Website is owned by the DISTRICT. Further, receipt by INDEX of the final payment due under this Agreement, title to the software code utilized to run the DISTRICT Website and all derivative works developed there from and all copies thereof shall remain the property of INDEX. Transfer of ownership of the aforementioned software code to DISTRICT will only occur in the event that INDEX ceases business operations while this Agreement is in force and all payments are current or at the termination of this Agreement, if it is not renewed, the DISTRICT may purchase the compiled source code of the web pages for a price agreed upon by the parties, which shall not to exceed \$50,000.

**12. Title to DISTRICT Marks and Intellectual Property.** INDEX and the DISTRICT agree that the name, associated logos, the names of individual buildings, and all content uploaded by or received from the DISTRICT is the property of the DISTRICT, and may not be reproduced or used outside the terms of this Agreement.

**13. License to INDEX.** Subject to the terms and conditions contained in this Agreement, INDEX shall have a perpetual, worldwide, royalty-free, irrevocable license to use software code used to develop the DISTRICT Website and all derivative works developed there from. Both parties acknowledge that INDEX develops software and web applications as its primary business function and may at INDEX's sole discretion sell applications that may have similar functionality, in part or in whole, as the software code developed to operate the DISTRICT Website before and after the termination of this Agreement.

**14. Non-Disclosure.** Both parties shall take all steps necessary to maintain the DISTRICT Website in confidence and shall not, nor shall it permit its employees, or its permitted agents or consultants to sell, transfer, disclose, display or otherwise make accessible any confidential information relating to the DISTRICT Website, or any copies thereof, in whole or in part, to any third party without written consent. Any unauthorized use of confidential or proprietary information without consent will result in damages to the breaching party. If either party is required to secure legal assistance to recover any amount of damages the prevailing party will be entitled to legal fees as stated in section 20 of this agreement.

**15. Complete Contract and Amendments.** This Agreement, together with any exhibits attached hereto, supersedes all prior agreements and understandings between the parties hereto for performance of the services described herein, and constitutes the complete agreement and understanding between the parties hereto unless modified in writing, signed by both parties.

**16. Notices.** Any notice or communication required to be given by either party hereunder shall be in writing and shall be hand delivered or sent by recognized overnight courier to the party receiving such communication at the recipient party's address.

**17. Non-Solicitation.** DISTRICT recognizes that the employees and agents of INDEX, and such employee and agents' loyalty and service to INDEX, constitute a valuable asset of

INDEX. Accordingly, DISTRICT hereby agrees not to knowingly and directly or indirectly make any offer of employment to, nor enter into a consulting relationship with, any person who was employed or otherwise engaged by INDEX within two (2) years of such person's employment or other engagement by INDEX. This time period will only be waived in the event that INDEX either discontinues operations prior to the expiration of the term or if INDEX provides DISTRICT with a written waiver to this provision.

**18. Force Majeure.** Except as to the payment of money by the due date required under this Agreement, which will in no event be excused hereunder, neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay.

**19. Assignment.** Either party may not assign or transfer, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part.

**20. Equitable Relief.** The parties acknowledge and agree that irreparable harm would result in the event of a breach or threat of a breach by either party of this Agreement. In such an event, and notwithstanding any other provision of this Agreement, the non-breaching party shall be entitled to a restraining order, order of specific performance, or other injunctive relief, without showing actual damage and without bond or other security. The remedies under this section are not exclusive, and shall not prejudice or prohibit any other rights or remedies under this Agreement or otherwise.

**21. Attorneys' Fees.** In the event either party is required to obtain legal assistance (including, but not limited to, in-house counsel) to enforce its rights under this Agreement, or to collect any monies due for Services provided or damages sustained, the prevailing party shall be entitled to receive from the other party, in addition to all other sums due, reasonable attorney's fees, court costs and expenses, if any, incurred enforcing its rights and or collecting its monies.

**22. Indemnification.** The Parties shall indemnify and hold harmless the other from any claim, cause of action, loss, damage, cost and expense, judgment, order, civil and criminal penalty, forfeiture and/or assessment against either party asserted by or awarded to, any third party arising from or related to acts committed solely by the other party. Notwithstanding anything in this Agreement to the contrary, DISTRICT expressly reserves the right to assert, in whole or in part, the defense(s) of governmental or sovereign immunity permitted under the laws of the Commonwealth of Kentucky.

**23. Independent Contractors.** The Parties are independent legal entities. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, joint venture, partnership, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither INDEX nor DISTRICT nor any of their respective agents or employees shall control or have any right to control the activities of the other party in carrying out the terms of this Agreement. Neither party, nor any employees or agents thereof, shall have any claim

under this Agreement or otherwise against the other party for social security benefits, workman's compensation, disability benefits, unemployment insurance, vacation, sick pay or any other employee benefits of any kind, and INDEX is not responsible for any payroll withholding obligations of any nature whatsoever arising as a consequence of this Agreement, including, without limitation, withholding of federal and/or state taxes, FICA (Social Security) taxes, unemployment insurance taxes, and disability insurance taxes.

**24. Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement

**25. Severability.** In the event that one or more provision(s) of this Agreement are deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.

**26. Negotiated Agreement.** This agreement is the result of negotiations between the parties both of whom are deemed the draftsman of this agreement.

[INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first written above.

INDEXBLUE, INC.,  
an Ohio corporation

By:\_\_\_\_\_

Name: Nathan Heerdt

Title: Director of Operations

Gallatin County School District,  
a school district in the Commonwealth of Kentucky

By:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Appendix A:**

Reference Original SchoolPointe Proposal

**Appendix B: ProRated Amount for remainder of 2011-2012**

SchoolPointe Subscription Amount \$1,000.00 Per Year Fee waved for duration of contract  
Hosting Amount \$3,000.00 Per Year  
One Time Set Fee \$1,500.00 Fee waved for duration of contract  
All Modules Included within this contract

**Appendix C:Additional Years**

SchoolPointe Subscription Amount \$1,000.00 Per Year Fee waved for duration of contract  
Hosting Amount \$3,000.00 Per Year  
All Modules Included within this contract