

SchoolPointe Website Contract

For

Dayton Independent School District

Term: 3

Subscription Start Date: 7/1/2016  
Subscription End Date: 6/30/2019

Prepared by: Lauren Schultz



## **SCHOOLPOINTE WEBSITE DEVELOPMENT AGREEMENT**

**THIS WEBSITE DEVELOPMENT AGREEMENT** (this "Agreement") is dated as of January 8, 2016, by and between IndexBlue, Inc., doing business as Digital School Network an Ohio corporation ("DIGITAL"), located at 3248 W. Henderson Rd., Ste. 100, Columbus, OH 43220, and the Dayton Independent School District, a school district organized under the laws of the State of Kentucky, located at 200 Clay St Dayton, KY 41074 ("DISTRICT"). Collectively referred to as the "Parties."

**1. Term.** The term of this Agreement shall be for a period of 3 years and will commence on July 1, 2016 and shall remain in force until June 30, 2019, except as otherwise provided in this Agreement. This Agreement will automatically renew for successive three (1) year periods if DISTRICT does not notify DIGITAL of their intent to discontinue services ninety (90) days prior to the expiration of the then current term.

**2. Services.** DIGITAL 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 DIGITAL the total amount of \$3,150.00 depending on client selection. DISTRICT will make one (1) annual payments to DIGITAL in the amount of \$3,150.00 on each of the following dates:

<b>SERVICE YEAR</b>	<b>PAYMENT AMOUNT</b>
7/01/2016:	\$3,150.00
7/01/2017:	\$3,150.00
7/01/2018:	\$3,150.00

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

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

(a) the parties agree that DIGITAL will 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) DIGITAL acknowledges, 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. DIGITAL 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) DIGITAL will 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. DIGITAL 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 DIGITAL servers or networks. The DISTRICT will avoid, where possible, transmission of any data to DIGITAL that is confidential.

(d) DIGITAL agrees that it will 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 DIGITAL's cooperation if necessary. DIGITAL will immediately notify the DISTRICT of any request made directly to it for DISTRICT data. DIGITAL will archive changes to the DISTRICT's web sites consistent with DISTRICT's policy on records retention.

(e) should a large-scale downtime event occur, defined as a Severity "0" event in the proposal (Appendix A) lasting more than 12 hours, DIGITAL 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 DIGITAL with full, good faith cooperation and such information as may be required by DIGITAL in order to develop and implement the DISTRICT Website, DISTRICT shall:

(a) provide DIGITAL 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 DIGITAL agent located on DISTRICT's premises test time on the system configuration designated by DIGITAL, which availability shall include sufficient

disk storage space to permit DIGITAL to develop and test the DISTRICT Website, and access to the system configuration through at least one dedicated terminal for each DIGITAL agent at DISTRICT's premises;

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

(d) make available to DIGITAL, 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.** Either party shall have the right, with cause, to terminate this Agreement upon sixty (60) days written notice to the other party upon:

(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 DIGITAL 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. Title to Software.** DIGITAL and the DISTRICT agree that the software code used to op the DISTRICT Website under this Agreement is the sole property of DIGITAL. Both parties also agree that all data entered into the DISTRICT Website is owned by the DISTRICT. Further, receipt by DIGITAL 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 DIGITAL. Transfer of ownership of the aforementioned software code to DISTRICT will only occur in the event that DIGITAL 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 not to exceed \$50,000.

**10. Title to DISTRICT Marks and Intellectual Property.** DIGITAL 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.

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

**12. 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.

**13. Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the DISTRICT's state. The parties to this Agreement hereby designate the state or federal courts of Franklin County, Ohio as the courts of proper jurisdiction and exclusive venue for any actions or proceedings relating to this Agreement or any document or instrument executed in connection herewith; hereby irrevocably consent to such designation, jurisdiction, and venue; and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceeding initiated in such courts.

**14. 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.

**15. 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.

**16. Non-Solicitation.** DISTRICT recognizes that the employees and agents of DIGITAL, and such employee and agents' loyalty and service to DIGITAL, constitute a valuable asset of DIGITAL. Accordingly, DISTRICT hereby agrees not to 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 DIGITAL within two (2) years of such person's employment or other engagement by DIGITAL. This time period will only be waived in the event that DIGITAL either discontinues operations prior to the expiration of the term or if DIGITAL provides DISTRICT with a written waiver to this provision.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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 DIGITAL 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 DIGITAL 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.

**23. 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

**24. 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.

**25. 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.

SchoolPointe an Ohio corporation

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

Name: Josh Boyer

Title: Vice President

Dayton Independent School District,  
a school district in the state of KY

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

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

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



**Appendix A:**

**Pricing:**

DAYTON INDEPENDENT SCHOOLS

<b>Pricing Summary: Year 1-3</b>	
<b><u>Item</u></b>	<b><u>Price</u></b>
Annual Subscription	\$150
Web Hosting	\$3,000
Website Design Template	No Charge
Mobile IOS/Android App (Optional)	Included
<b>SchoolPointe Cost 1-3:</b>	<b>\$3,150.00</b>

## **Appendix C: Level Agreement**

This Service Level Agreement (“SLA”) governs SchoolPointe Services (“Services”) provided under the Digital School Network Terms and Conditions of Service agreed to by each user of the Services (“Customer”) and IndexBlue, LLC (“SchoolPointe Business”). SchoolPointe Business may supplement or amend this SLA without notice, with such changes being effective upon their posting to [www.schoolpointe.com/sla.pdf](http://www.schoolpointe.com/sla.pdf).

### **Description and Objectives**

SchoolPointe Services will be measured on the basis of the following service level objectives (“SLA Objectives”): site availability (“Availability”), notification of scheduled maintenance and mean time to respond (“MTTR”). This SLA provides for 24 hour a day, 7 days per week coverage of the SLA. The SLA does not apply before official implementation (or “go live date”) of a Customer site.

### **Availability.**

The SLA Objectives for Availability are as follows:

Component	Description	Uptime Percentage
Public Web Site	The public facing web site accessible to end users.	<b>99.9%</b> (about 45 minutes/month)
CMS Admin Panel	The area for the Customer to administer the site content and settings.	<b>99.9%</b> (about 45 minutes/month)
Learning Management System (“LMS”)	The area in which the Customer, students and parents interact/communicate.	<b>99.9%</b> (about 45 minutes/month)

Availability will be measured in sliding three month windows, based on the average of actual minutes of Service availability as a percentage of the corresponding total available minutes for the three month window, and will be calculated as follows:

$$\text{Availability} = \frac{\text{Calendar Months Minutes} - \text{Excluded Minutes} - \text{Outage Minutes}}{\text{Calendar Months Minutes} - \text{Excluded Minutes}} \times 100$$

An outage is defined as a period of 5 minutes or more where a Service is unavailable from a browser or other HTTP client due to an error or system issue within the SchoolPointe hosting environment or software. All outages must be verified by SchoolPointe Business before the resolution process will begin. Outages caused by the Customer’s own network, DNS interruptions outside of SchoolPointe’s control, or issues with general internet accessibility, are not covered. Excluded Minutes include time spent waiting for required response from Customer and scheduled maintenance of SchoolPointe Services.

### **Other SLA Objectives.**

Other SLA Objectives covered under the SchoolPointe SLA include the following which will be measured on a best effort basis:

Objective	SLA
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<p><b>Scheduled Maintenance.</b></p> <p>We will notify the Customer of all significant scheduled maintenance to SchoolPointe Services.</p>	<p><b>Notification</b> - No less than 24 hours prior to maintenance window unless changes are to address a Critical or Major issue.</p> <p><b>Maintenance for Public Website and CMS Admin Panel</b> will be restricted to off-peak hours.</p> <p><b>Maintenance for Learning Management System (“LMS”)</b> can usually be performed without any interruption of service. If service will be interrupted, the implementation will be restricted to off-peak hours.</p>
<p><b>Mean Time To Respond (MTTR).</b></p> <p>SchoolPointe will respond to Customer support tickets within a reasonable amount of time.</p>	<p><b>Response/Resolution time by request category:</b></p> <ul style="list-style-type: none"> <li>• <u>Low/Information</u>: no timeframe.</li> <li>• <u>Minor</u>: 48 hours or less.</li> <li>• <u>Major</u>: 24 hours or less.</li> <li>• <u>Critical</u>: 12 hours or less.</li> </ul> <p><b>Definition of Classification:</b> SchoolPointe Business shall take notice of severity level of request from Customer, but will assess and classify the level of request based on its own assessment. In assessing the level of request classification, SchoolPointe Business will utilize the following categorizations:</p> <ul style="list-style-type: none"> <li>• <u>Low/informational</u> - A notification of information or a request that does not have immediate urgency;</li> <li>• <u>Minor</u> - A notification of a support request item with low impact and/or individual user impact;</li> <li>• <u>Major</u> - Service impact of item of at least 50% of users with little to no workarounds; or</li> <li>• <u>Critical</u> - Service Outage</li> </ul>

### Submitting a Support Request

The following steps should be followed when reporting an outage with SchoolPointe.

	Details
<b>Step One</b>	<ul style="list-style-type: none"> <li>• Contact SchoolPointe Customer Support via email at <a href="mailto:support@digitalschoolnetwork.com">support@digitalschoolnetwork.com</a></li> </ul>
<b>Step Two</b>	<ul style="list-style-type: none"> <li>• For Critical and Major issues call technical support at 1-866-545-2549</li> <li>• For Minor and Low issues call customer support during business hours 8:00 AM ET - 5:00 PM ET, Monday-Friday at 1-866-545-2549</li> </ul>

### Proactive Measures for Objective Completion

SchoolPointe has gone to great lengths to ensure that it exceeds all of its objectives. Here is a summary of some the steps that have been taken to ensure all objectives are able to be met.

- **Redundancy.** SchoolPointe has gone to great lengths to ensure that there is no single point of failure wherever possible. This applies to web servers, DNS servers, file servers, and other systems.
- **Enterprise Monitoring.** SchoolPointe uses enterprise-grade application and server monitoring for both proactive and historical response. The monitoring systems in use will alert the SchoolPointe Business in the event of many Service outages or if various metrics are outside set thresholds.

- **Backups.** SchoolPointe is committed to safeguarding customer data. Database backups are taken daily and are retained for the following periods:
  - Daily Backups - 1 month
  - Monthly Backups - 1 yearUser files are stored redundantly on at least two servers.

**Change log:**

Created December 16<sup>th</sup>, 2013