

**Get Connected. Get Results.**

## **Products and Services Contract**

**For**

**Marion County School District-KY**

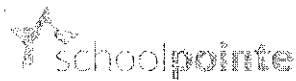
Date Created: February 24, 2017

Created by: Josh Boyer

Term: 5 Years

Subscription Start Date: July 1, 2017

Subscription End Date: June 30, 2021



3248 W. Henderson Rd, Columbus, Ohio 43220 **Phone:** (866) 545-2549 **Email:** sales@schoolpointe.com

## **SCHOOLPOINTE WEBSITE DEVELOPMENT AGREEMENT**

**This Website Development Agreement** (this "Agreement") is dated as of February 26, 2017 by SchoolPointe, Inc., a Delaware Corporation ("SP"), located at 3248 W. Henderson Rd., Suite 100, Columbus, Ohio 43220, and Marion County School District-KY, a school organized under the laws of, located at 755 East Main Street Lebanon, KY 40033("SCHOOL"). Collectively referred as the "Parties".

**1. Term** The term of the Agreement shall be for a period of 5 Years and will commence on July 1, 2017 and shall remain in force until June 30, 2021 except as otherwise provided in this Agreement. This Agreement will automatically renew for successive one (1) year periods if SCHOOL does not notify SP of their intent to discontinue services ninety (90) days prior to the expiration of the then current term.

**2. Services** SP agrees to develop, implement and maintain a website for SCHOOL as set forth in the original proposal as well as all appendices accompanying this Agreement to SCHOOL (Appendix A,B and C), including the development of all software for the website (the website and all software development in connection therewith and hereinafter together referred to as the "SCHOOL Website").

### **3. Payments**

(a) For the services rendered hereunder, SCHOOL agrees to pay SP the total amount of \$1,000.00 until June 30, 2017. SCHOOL will subsequently make annual payments to SP in the amount of \$6,230.00 on July 1st of each year of the contract.

#### **Bill Dates**

March 15, 2017	\$1,000.00
July 1, 2017	\$6,230.00
July 1, 2018	\$6,230.00
July 1, 2019	\$6,230.00
July 1, 2020	\$6,230.00
July 1, 2021	\$6,230.00

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

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

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

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

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

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



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

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

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

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

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

(b) setup, format and make available to SP the files and tables specified by SP;

(c) make available to SP, personnel of SCHOOL for testing the SCHOOL Website and training users of the SCHOOL Website;

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

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

**7. Termination With Cause** In the event that SCHOOL can prove that it is financially impossible to allocate on their budget the amounts payable to SP required under the Agreement, then SCHOOL may terminate the Agreement upon ninety (90) days written notice to SP of this qualifying event. Either party shall have the right, with cause, to terminate this Agreement upon ninety (90) 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 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) termination of the business;

(c) voluntarily or involuntarily 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 SCHOOL terminates this Agreement without cause, SCHOOL will be responsible to pay SP liquidated damages, not to be construed as a penalty, in the amount of 50% of the sum of all remaining payments 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 contract are received.

**9. Title to Software** SP and SCHOOL agree that the software code used to operate the SCHOOL Website under this Agreement is sole property of SP. Both parties also agree that all data entered into the SCHOOL Website is owned by the SCHOOL. Further, receipt by SP of the final payment due under this Agreement, title to the software code utilized to run the SCHOOL Website and all derivative works developed there from and all copies thereof shall remain the property of SP. Transfer of ownership of the aforementioned software code to SCHOOL will only occur in the event SP 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 SCHOOL 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.

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

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

**12. Non-Disclosure** Both parties shall take all steps necessary to maintain the SCHOOL 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 SCHOOL 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 due 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 State of Ohio. 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 objection 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** SCHOOL recognizes that the employees and agents of SP, and such employee agents' loyalty and service to SP, constitute a valuable asset of SP. Accordingly, SCHOOL 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 SP within two (2) years of such person's employment or other engagement by SP. This time period will only be waived in the event that SP either discontinues operation prior to the expiration of the term or if SP provides SCHOOL 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** Neither party may assign or transfer, without the prior written consent of the other party, 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. Attorney's 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 Service 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.

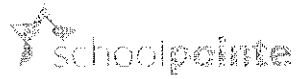
**21. Indemnification** The Parties shall indemnify and hold harmless the other from any claim, cause of action, loss, damage, cost and expense, judgement, order civil and criminal penalty, forfeiture and/or assessment against either party asserted by or awarded to, any third party arising from or related to acts committed solely by the other party. Notwithstanding anything in this Agreement to the contrary, SCHOOL 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 State of Ohio.

**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 SP or SCHOOL nor any of their respective agents or employee shall control or have any rights 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 SP 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 craftsman of this Agreement.



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IN WITNESS WHEREOF, the parties have executed this Agreement as of:

February 26, 2017

SchoolPointe, Inc,

a Delaware Corporation

  
2/24/2017

Name: Josh Boyer

Title: Vice President of SchoolPointe

Marion County School District-KY,

a School

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Name: Taylora Schlosser

Title: Superintendent



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## **APPENDIX A: PRICING**

Marion County School District-KY

Enrollment: 3,200

### **Setup Costs**

Description	Price
Custom Design Free with 5 Year Extension	\$0
SchoolPointe Stay Connected Mobile App	\$1,000
Total	\$1,000

### **Annual Costs**

Description	Price
SchoolPointe CMS Annual Cost	\$6,230
Branded App Included 5 Year Agreement	\$0
Total	\$6,230



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## **APPENDIX B: IMPLEMENTATION**

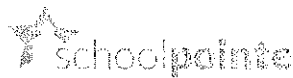
**Timeline:** We will launch your site as quickly as possible. We'll help you complete your design phase and launch your beta site. After your site is in beta, all that's left is to add your school data. As soon as you are satisfied with your website, we can launch your new, live website.

**Design:** We will provide your school with access to our design gallery to you select a beginning point for your design. If you have chosen a custom design, you will receive a survey to find out the direction your school would like to go with the design. You'll then work with one of our designers to personalize your new website design. You'll receive 3 design revisions to ensure you get your desired look and feel.

**Training:** As a SchoolPointe customer, you'll receive unlimited live online training. The training will cover all areas of our website and can be attended by as many participants as needed via online training. Onsite training can also be purchased.

**Ongoing Support:** As a subscription customer, you'll receive all website upgrades at no additional cost. You'll also have access to customer support through phone, email and online issue tracking at no additional cost.





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## **APPENDIX C: SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("SLA") governs SchoolPointe Services ("Services") provided under the SchoolPointe Terms and Conditions of Services agreed to by each user of the Services ("Customer") and SchoolPointe, 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"). The SLA provides for 24 hours 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	Up-time Percentage
Public Website	The public facing website accessible to end users.	99.9% (about 45 min/month)
CMS Admin Panel	The area for the customer to administer the site content and settings.	99.9% (about 45 min/month)
Learning Management System ("LMS")	The area in which the customer, students and parents interact/communicate.	99.9% (about 45 min/month)
Facility Management System ("FacilityPointe")	The system that allows control and management of all resource and maintenance requests.	99.9% (about 45 min/month)
Online Forms Creator ("Formality")	The system that allows users to create and publish forms.	99.9% (about 45 min/month)
SchoolPointe Stay Connected Mobile App ("Group App")	A mobile app available for parents and community to download to access school information and receive notifications.	99.9% (about 45 min/month)
Branded Mobile App	A stand alone branded mobile app available for parents and community to download to access school information and receive notifications	99.9% (about 45 min/month)

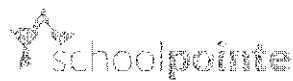
Availability will be measured in sliding three month windows, based on the average of actual minutes of Service availability as a percentage of the corresponding total available minutes for the three month window, and will be calculated as follows:

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

Calendar Months - Excluded Minutes

x 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 accessibility, are not covered. Excluded minutes include time spent waiting for required response from customer and scheduled maintenance of SchoolPointe services.



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## 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
<b>Scheduled Maintenance</b>	<b>Notification-</b> No less than 24 hours prior to maintenance window unless changes are to address a Critical or Major issue.
We will notify the customer of all significant maintenance to SchoolPointe Services.	<b>Maintenance for Public Website and CMS Admin Panel-</b> Will be restricted to off-peak hours  <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.
<b>Mean Time To Respond ("MTTR")</b>	<b>Response/Resolution time by request category:</b>
SchoolPointe will respond to customer support tickets within a reasonable amount of time.	<ul style="list-style-type: none"><li>• <u>Low/Informational</u>: no time frame</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>
	<b>Definition of Classifications:</b> SchoolPointe Business will 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: <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.</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:

Step Number	
<b>One</b>	• Contact SchoolPointe Customer Service via email at support@schoolpointe.com
<b>Two</b>	• For critical and major issues call technical support at (866) 545-2549 2 • For minor and low issues call support during business hours 8:00 AM EST to 5:00 PM EST, Monday through Friday at (866) 545-2549



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### **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 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 system in use will alert the SchoolPointe Business in the event of any 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 year

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User files are stored redundantly on at least two servers.

