

## GENERAL PRODUCTS AND SERVICES AGREEMENT



This General Products and Services Agreement ("Agreement") is dated as of July 01, 2019 by SchoolPointe, Inc., a Delaware Corporation ("SP"), located at 3248 West Henderson Rd., Suite 100, Columbus, Ohio 43220, and Boone County Schools, a school organized under the laws of Kentucky, located at 8330 U.S. Highway 42, Florence, Kentucky 41042 ("SCHOOL"). Collectively referred to as "Parties".

**1. Term** The term of the Agreement shall be for a period of 3 years and will commence on July 01, 2019 and shall remain in force until June 30, 2022, 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 products for SCHOOL as set forth in Appendices A and B, including the development of all software for the products (the products and all software development in connection therewith and hereinafter together referred to as the "Services").

### **3. Payments**

(a) For the Services rendered hereunder, SCHOOL agrees to pay SP the total amount of the setup costs set forth in Appendix A. SCHOOL will be invoiced the total amount of the setup costs upon acceptance of this Agreement. SCHOOL will subsequently make annual payments to SP for the total amount of annual costs set forth in Appendix A on July 1st of each year of the contract, beginning July 1, 2019.

(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, at which time the payment schedule and amounts will be modified accordingly.

(d) A late fee of five (5) percent of payment due may be assessed to any payment not received net ninety (90) days of the invoice generation date.

**4. Cooperation** Both SP and SCHOOL acknowledge and agree that successful development and implementation of the Services 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 Services, SP shall:

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

(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 the 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 Services, 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 Services;

(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 Services and training users of the Services;

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

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

**7. Termination With Cause** In the event that the 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 SP is the party responsible for the breach and the condition has not been satisfactorily resolved within the specified period, then SP will reimburse SCHOOL for any unused services. If SCHOOL is the party responsible for the breach and the condition has not been resolved within the specified period, then SCHOOL will pay SP for the remaining term of the Agreement. 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 9-12 inclusive, 15 and 18** 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 100% 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 Services under this Agreement is sole property of SP. Both parties also agree that all data entered into the Services 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 Services 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.

**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 of this Agreement, SP shall have a perpetual, worldwide, royalty-free irrevocable license to use the software code used to develop the Services 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 Services before and after the termination of this Agreement.

**12. DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")** SP and SCHOOL agree to follow all sections of the DMCA. The parties agree not to knowingly post any copyrighted information and/or receive any direct financial benefit from the posting of copyrighted information on any website controlled, designed, and/or operated by SP. The parties agree to expeditiously remove, or disable access to, any allegedly copyrighted infringing materials from its website upon the actual knowledge of infringing activity and/or material, or upon the valid notification of claimed infringement by an owner of copyrighted material or an agent thereof. The parties further agree that they will not interfere with the standard technical measures within the copyright industry. SCHOOL agrees to promptly notify SP of any notification received by SCHOOL from an alleged copyright owner of any alleged copyright violations. The parties agree that SP retains the right to terminate its relationship with SCHOOL, with cause, in the event that SCHOOL repeatedly violates the copyright protects of valid copyright owners.

**13. Non-Disclosure** Both parties shall take all steps necessary to maintain the Services 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 Services, 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 written 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 21** of this Agreement.

**14. Governing Law and Venue** This Agreement shall be governed by and construed under the laws of the State of Kentucky. The parties to this Agreement hereby designate the state or federal courts of the Commonwealth Of Kentucky 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.

**15. Complete Contract and Amendments** This Agreement together with any Appendices 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** 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

**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** SP may assign or transfer, at its sole discretion, without prior consent of District, 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. 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 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** To the extent permissible by Kentucky law, 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 to the extent permitted under the laws of the State of Ohio.

**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 (in relation to ownership of either entity), 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 employees 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.

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

## AGREEMENT AUTHORIZATION

IN WITNESS WHEREOF, the parties have executed this Agreement as of: **July 01, 2019**

SchoolPointe, Inc., a Delaware Corporation

  
2019-05-07 17:04:36

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Authorized Signer: Josh Boyer

Title: Vice President

Boone County Schools, a School organized under the laws of Kentucky

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Authorized Signer:

Title:

## **APPENDIX A: PRICING**

***Original Agreement Start Date: July 01, 2019***

***Original Agreement End Date: June 30, 2022***

***Appendix A Effective Date: July 01, 2019***

Appendix A ("Appendix") is in reference to and forms part of the General Products and Services Agreement ("Agreement") as dated above between SchoolPointe, Inc., a Delaware Corporation ("SP"), located at 3248 West Henderson Rd., Suite 100, Columbus, Ohio 43220, and Boone County Schools, a school organized under the laws of Kentucky, located at 8330 U.S. Highway 42, Florence, Kentucky 41042 ("SCHOOL"). Collectively referred as "Parties". To the extent that any of the terms or conditions contained in this Appendix contradict or conflict with of the terms or conditions of the original Agreement, it is expressly understood and agreed that the terms of the Appendix take precedence and supersede the terms and conditions in the original Agreement.

May it be know that the Parties, for good consideration, do hereby agree to make the following changes and/or additions that are detailed below. These additions shall be made valid and effective upon acceptance of the Appendix. Any and all setup costs detailed in the Appendix will be invoiced upon acceptance of the Appendix. Any and all annual costs detailed in the Appendix will be invoiced on the anniversary date of the original Agreement.

### **Annual Costs:**

Description	Price
Unlimited Live Web-Ex Training, & Implementation	\$19,150
CMS Branded App	\$1,250
Total	\$20,400

## APPENDIX B: SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") governs the Services in **section 2** of this Agreement ("Services") provided under the SchoolPointe Terms and Conditions agreed to by each user of the Services ("Customer") and SchoolPointe, Inc. ("SP").

**Description and Objections** Services will be measured on the basis of the following Service Level Objectives ("SLA Objectives"): Site Availability ("Availability") and Notification of Scheduled Maintenance and Mean Time to Respond ("MTTR"). The SLA provides for twenty-four (24) hours a day, seven (7) days per week coverage of the SLA. The SLA does not apply before official implementation date or ("Go Live Date") of Services contracted by a customer.

**Availability** The SLA Objectives for Availability are as follows:

Component		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)
CMS Branded App	A stand alone branded mobile app available for parents and community members to download to access school information and receive push notifications.	99.9% (about 45 min/month)
CMS Mobile App	A mobile app available for parents and community members to download to access school information and receive push notifications.	99.9% (about 45 min/month)
FacilityPointe ("FMS")	A system that allows control and management of all resources, resource requests and maintenance requests.	99.9% (about 45 min/month)
Formality	A system that allows creation, publishing and submission of online forms.	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)

Availability will be measured in sliding three (3) month windows, based on the average of actual minutes of Services availability as a percentage of the corresponding total available minutes for the three (3) month window, and will be calculated as follows:

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

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

Other SLA Objectives Descriptions	
<p><b>Scheduled Maintenance</b> We will notify the customer of all significant maintenance to Services.</p>	<p><b>Notification-</b> No less than twenty-four (24) hours prior to the maintenance window unless changes are to address a Critical or Major issue.</p> <p><b>Maintenance for All Components-</b> If service will be interrupted, the implementation will be restricted to off-peak hours.</p>
<p><b>Mean Time to Respond ("MTTR")</b> SP will respond to and resolve 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/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>
Other SLA Objective Descriptions	
	<p><b>Definition of Classifications-</b> SP 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, SP 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 for item with 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 SP:

Step Description	
<b>Step One</b>	<ul style="list-style-type: none"> <li>• Contact customer support via Live Chat or via Email at support@schoolpointe.com</li> </ul>
<b>Step Two</b>	<ul style="list-style-type: none"> <li>• For minor and low/informational issues, call customer support during normal business hours (Monday through Friday 8:00 AM EST to 5:00 PM EST) at (866) 545-2549</li> <li>• For critical and major issues call customer support 24/7/365 at (866) 545-2449</li> </ul>

**Proactive Measures for Objective Completion** SP has gone to great lengths to ensure that we exceed all of the objectives detailed in this SLA. Below is a summary of the steps that SP have taken to ensure all objectives are able to be met consistently:



- **Redundancy-** SP has gone to great lengths to ensure that there is no single point of failure wherever possible for any and all components. This applies to web servers, DNS servers, file servers and all other system SP currently utilizes. User files are stored redundantly on at least two (2) servers.
- **Enterprise Monitoring-** SP utilizes enterprise-grade application and server monitoring for both proactive and historical response. The monitoring system in use will alert SP in the event of a service outage or if various metrics are outside set thresholds.
- **Backups-** SchoolPointe is committed to safeguarding customer data. Database backups are performed on a daily and monthly basis and are retained for the following periods:
  - Daily backups: 1 Month
  - Monthly backups: 1 Year