IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

BREVARD PUBLIC SCHOOLS,   Case No.: _____

  Plaintiff,

v.

N. HARRIS COMPUTER CORPORATION, AND
HARRIS LOCAL GOVERNMENT SOLUTIONS, INC.,
(JOINTLY d/b/a HARRIS SCHOOL SOLUTIONS)

  Defendants.
_____/

COMPLAINT

Plaintiff, BREVARD PUBLIC SCHOOLS ("Plaintiff"), by and through the undersigned

counsel, sues Defendants, N. HARRIS COMPUTER CORPORATION, and HARRIS LOCAL

GOVERNMENT SOLUTIONS, INC., jointly d/b/a HARRIS SCHOOL SOLUTIONS and

alleges:

PARTIES

1. Plaintiff, BREVARD PUBLIC SCHOOLS, is a Florida governmental entity located in

Brevard County, Florida and oversees the education system of Brevard County, Florida.

2. Defendant, N. HARRIS COMPUTER CORPORATION, (hereinafter "N. Harris") is a

Canadian for-profit Corporation, registered to do business in the State of Florida with a principal

place of business located at 1 Antares Drive, Suite 400, Ottawa, Ontario K2E-8C4 CA. Its agent

for service of process is located at CT Corporation System, 1200 S. Pine Island Rd., Plantation,

FL 33324.

3. Defendant, HARRIS LOCAL GOVERNMENT SOLUTIONS, INC., (hereinafter "Harris

Local") is a Delaware Corporation registered to do business in the State of Florida with its principal

place of business located at 1 Antares Drive, Suite 400, Ottawa, Ontario K2E-8C4 CA. Its agent

for service of process is located at CT Corporation System, 1200 S. Pine Island Rd., Plantation,

FL 33324.

4.   Defendants N. Harris & Harris Local jointly conduct business as "Harris School Solutions"

(hereinafter "Harris Schools").

5.   Defendants shall be collectively referred to as ("Harris Defendants").

6.   The Plaintiff and Defendants shall be collectively referred to as ("Parties").

JURISDICTION AND VENUE

7.   Venue is proper in Brevard County, FL as it is where the Plaintiff resides, as well as where

the alleged acts, conduct, errors and omissions of Harris Defendants, giving rise to the Plaintiff's

actions, all occurred.

8.   Damages in this action exceed $15,000.00, exclusive of interest, costs, and attorney's fees.

COMMON ALLEGATIONS

9.   On or about July 17, 2002, Plaintiff entered into a Master License Agreement with

CrossPointe, LLC for the provision of an application, environment, finance, human resources and

student information systems (Product Order Form 1001).   See Attached **Exhibit "A".**

10.   In August 2012, CrossPointe, LLC underwent a name change to Education Data

Resources, LLC ("EDR"). The name of the company providing software and maintenance services

to the Plaintiff changed several times from the date the contract was awarded in 2002 to June 26,

2015. Those changes did not affect the contract awarded by the Plaintiff on July 17, 2002.

11.   All invoices were due and payable within thirty (30) days of the date of the invoice.

CrossPointe, LLC was required to deliver the software promptly after receipt of the down payment

of the Product Order Price.

12.   On or about April 12, 2013, Plaintiff and EDR entered into Product Order Form 1002, which was affixed to and became part of the July 17, 2002 Master License Agreement. See Attached **Exhibit "B".** Product Order Form 1002 was for the creation, delivery, installation and maintenance of new software for the functional areas of Human Resources/Payroll, Employee Portal, Financial Information, Vendor Portal, Supply Chain, Enterprise Information Portal, and Workflow Engine and Project Tasks. The purchase price was $5,200,000.00.

13.   The new software contracted under Product Order Form 1002 was to convert the existing software platform from a "green screen" legacy system to a more functional web-based system. The new software was designed using 21st century technology which was compatible with current and future trends. The new software was to increase functionality, efficiency, accessibility and transition Plaintiff to a paperless system. The new software was designed to enhance security and reliability and reduce costs.

14.   Product Order Form 1002 set forth a payment schedule. Delivery of the new software was to occur promptly after receipt of Plaintiff's initial payment.

15.   Plaintiff timely made the initial payment of $600,000.00 on or about April 15, 2013.

16.   EDR failed to deliver the new software.

17.   Plaintiff continued to make payments toward Product Order Form 1002, totaling $4,150,000.00.

18.   Product Order Form 1002 set an annual maintenance fee of $200,000.00 for two years beginning July 1, 2013 for EDR products listed on Product Order Form 1002. This sum was in addition to the annual maintenance fee of $360,000.00 for products listed on Product Order Form 1001.

19.   The maintenance fee between July 1, 2015 through June 30, 2018 was guaranteed not to

exceed $560,000.00 for products listed on Product Order Forms 1001 and 1002.

20.   Plaintiff made the following timely payments for software maintenance on Product Order Form 1002: (a) $200,000.00 in July 2013; and (b) $200,000.00 in July 2014. These payments were made in conjunction with the following maintenance fees paid on Product Order Form 1001: (a) $360,000.00 in July 2013; and (b) $360,000.00 in July 2014. In July 2015, Plaintiff paid $280,000.00 in maintenance fees. Between July 2013 and July 2015, Plaintiff paid $1,400,000.00 in maintenance fees on Product Order Forms 1001 and 1002.

21.   The July 2013 initial maintenance fee of $200,000.00 was made despite EDR's failure to timely develop, deliver, and implement the new software under the terms of Product Order Form 1002.

22.   EDR underwent another name change, again using the name CrossPointe, LLC.

23.   On or about June 26, 2015, Harris Defendants entered into an Asset Purchase Agreement (APA) with CrossPointe, LLC. See Attached **Exhibit "C".**

24.   Under the terms of the APA, CrossPointe, LLC sold and conveyed its software and intellectual property to N. Harris. CrossPointe, LLC sold and conveyed its computer equipment, accounts receivable, books and records, files and existing contracts with customers to Harris Local.

25.   As part of the APA, Harris Defendants purchased all the rights, obligations and liabilities of Product Order Form 1002.

26.   Harris Defendants have engaged in the continuation of CrossPointe's business, particularly with respect to Product Order Form 1002 and have assumed CrossPointe's obligations thereunder. Harris Defendants have repeatedly confirmed their obligation to the continued development, delivery and implementation of the new software.

27.   Harris Defendants knew or should have known the scope of the work defined in Product

Order Form 1002, the status of the development, delivery and implementation of the new software, and CrossPointe's failure to meet the terms of Product Order From 1002. In fact, at the time Harris Defendants took over the contract, Harris Defendants knew or should have known that the new software had been completed.

28.   Harris Defendants knew or should have known that as of the date of the APA, Plaintiff had paid $4,150,000.00 for the new software contracted under Product Order Form 1002 and $400,000.00 for maintenance for the new software which had not been developed, delivered and implemented.

29.   Sometime after execution of the APA, Harris Defendants represented to Plaintiff that it intended to develop, deliver, implement, and maintain the new software pursuant to the terms of Product Order Form 1002.

30.   Harris Defendants proposed a revised timeline for development, delivery and implementation of the new software, beginning in August 2015 through 2016.

31.   Despite repeated assurances by Harris Defendants regarding the timely development, delivery and implementation of the new software, Harris Defendants failed to meet any of the scheduled timelines. Of the contracted software development, only fractional and varied components have been developed and delivered to Plaintiff. Significant implementation, functionality and efficiency problems existed with the components of the new software that has been delivered.

32.   All conditions precedent to the maintenance of this action have occurred or have been otherwise satisfied.

Count I
Breach of Contract

33.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

34.   Plaintiff entered into a valid contract with CrossPointe, LLC for the development, delivery and implementation of software as set out in Product Order Form 1002.

35.   Harris Defendants purchased the contract from CrossPointe, LLC, including all rights, obligations and liabilities under that contract.

36.   Harris Defendants represented to Plaintiff that it intended to develop, deliver, implement and maintain the new software pursuant to the terms of Product Order Form 1002.

37.   Harris Defendants proposed a revised timeline for development, delivery and implementation of the new software, beginning August 2015 through 2016.

38.   Harris Defendants failed to meet the proposed timelines.

39.   Harris Defendants proposed revised timelines for development, delivery and implementation of the new software. Plaintiff agreed, permitting Harris Defendants the opportunity to cure their breach.

40.   Harris Defendants failed to develop, deliver, and implement the new software.

41.   Any components of the software delivered to Plaintiff and contracted under Product Order Form 1002 contained significant implementation, functionality and efficiency problems, did not meet the design objectives of the contracted new software, and otherwise fell below the standards, conditions and requirements of the contract.

42.   Harris Defendants materially breached the contract.

43.   In addition, commencing in July 2013, Plaintiff paid maintenance fees pursuant to Product Order Form 1002 for the new software which has either not been delivered or is not in compliance

with the contract terms.

44.   Plaintiff has been damaged as a result of Harris Defendants' material breach.

45.   Harris Defendants are liable to Plaintiff for incidental and consequential damages arising from the breach.

46.   Harris Defendants are also liable to Plaintiff for expectation damages. Due to Harris Defendants' failure to perform pursuant to Purchase Order Form 1002, Plaintiff did not receive the benefit of the bargain. Harris Defendants are therefore liable to the Plaintiff for the difference between the contract price for the promised new software and the market value of such software at the time of the breach.

     WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its costs, prejudgment interest, and any further relief that this Court deems just and proper.

Count II
Breach of Implied Covenant of Good Faith and Fair Dealing

47.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

48.   Harris Defendants purchased Product Order Form 1002 from CrossPointe, LLC, including all the rights, obligations and liabilities under that contract.

49.   Harris Defendants were required under applicable law to deal with Plaintiff in good faith and to deal fairly with Plaintiff regarding Product Order Form 1002.

50.   Harris Defendants' conscious and deliberate acts include but are not limited to (a) repeatedly delivering inferior, ill-performing, or non-functional software components; (b) repeatedly promising full performance of Product Order Form 1002; and (c) repeatedly extending schedule delivery dates constituting a violation of the implied covenant of good faith and fair

dealing.

51.   Harris Defendants failed to timely and effectively develop, deliver and implement the new software.

52.   Harris Defendants' breach of implied covenant of good faith and fair dealing has deprived the Plaintiff of the benefits of Product Order Form 1002.

53.   Plaintiff has suffered damage as a result of Harris Defendants' violations of the implied duty of good faith and fair dealing.

     WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its costs, prejudgment interest, and any further relief that this Court deems just and proper.

Count III
Fraud (In the Alternative)

54.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

55.   At the time of the APA, Harris Defendants knew or should have known of the scope of the work defined in Product Order Form 1002, the status of development, delivery and implementation of the new software, and CrossPointe's failure to meet the terms of Product Order Form 1002.

56.   Harris Defendants knew or should have known that they could not comply with the terms of the contract, could not develop, deliver or implement the contracted new software and otherwise lacked the capability to fully perform the contract.

57.   Harris Defendants knowingly made fraudulent statements regarding satisfaction of Product Order Form 1002. Harris Defendants fraudulently assured Plaintiff that they would complete the development, delivery and implementation of the new software in accordance with the terms of Product Order Form 1002.

58.   In conjunction with these fraudulent representations, Harris Defendants proposed timelines for performance of the contract. Harris Defendants knew or should have known the proposed timelines could not be met. Despite knowing that they could not effectuate development, delivery and implementation of the new software, Harris Defendants repeatedly requested timeline extensions attendant to continued assurances of full performance of the contract.

59.   Harris Defendants intended their fraudulent representations to induce Plaintiff to act on those fraudulent representations.

60.   In reliance on those fraudulent representations, Plaintiff agreed to and permitted Harris Defendants time well outside the contractual terms to perform the contract.

61.   Plaintiff suffered damages in justifiable reliance on the fraudulent representations of Harris Defendants.

        WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its costs, prejudgment interest, and any further relief that this Court deems just and proper.

<u>**Count IV**</u>
Negligent Misrepresentation (In the Alternative)

62.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

63.   Harris Defendants purchased Product Order Form 1002, including all the rights, obligations and liabilities under the contract.

64.   At the time Harris Defendants purchased Product Order Form 1002, Harris Defendants knew or should have known the scope of the work defined in Product Order Form 1002, the status of the development, delivery and implementation of the new software, and CrossPointe's failure to meet the terms of Product Order Form 1002.

65. In addition, Harris Defendants knew that approximately one-third of the contracted new software had been developed, with nearly all of it in the testing phase. Harris Defendants also knew or should have known that development of the larger components of the new software had not begun.

66. Harris Defendants repeatedly reassured Plaintiff that they would complete development, delivery and implementation of the new software.

67. In conjunction with these representations, Harris Defendants proposed timelines for performance of the contract which it knew or should have known could not be meet.

68. Harris Defendants were negligent in making these representations which they knew or should have known were false.

69. Harris Defendants intended the Plaintiff to rely on these negligent representations.

70. Plaintiff justifiably relied on Harris Defendants' negligent misrepresentations and was damaged.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its costs, prejudgment interest, and any further relief that this Court deems just and proper.

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Count V
Unjust Enrichment (In the Alternative)

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71. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

72. Plaintiff entered into Product Order Form 1002 with CrossPointe, LLC for the development, delivery, implementation and maintenance of new software.

73. Plaintiff paid CrossPointe, LLC for the development, delivery and implementation of new software, a total of $4,150,000.00 by December 2014. In addition, in 2013 and 2014, Plaintiff

paid CrossPointe, LLC $400,000.00 in maintenance fees for Product Order Form 1002 and $720,000.00 for Product Order Form 1001.

74.   In June 2015, Harris Defendants purchased Product Order Form 1002 from CrossPointe, LLC in an APA, including all the rights, obligations, and liabilities under that contract.

75.   At the time of entering into the APA, Harris Defendants knew or should have known the scope of the work defined in Purchase Order Form 1002, the status of the development, delivery and implementation of the new software, and CrossPointe's failure to comply with the terms of the contract.

76.   Plaintiff paid Harris Defendants maintenance fees for Product Order Forms 1001 and 1002. At the time maintenance fees were paid, the new software had not been developed, delivered and implemented as set forth in Product Order Form 1002.

77.   Harris Defendants voluntarily accepted and retained payments under the contract.

78.   Plaintiff has not received the contracted new software. Fractional and varied components have been developed and delivered to Plaintiff. Those delivered components contain significant implementation, functionality and efficiency problems, do not meet the design objectives of the contracted new software, and otherwise fall below the standards, conditions and requirements of the contract.

79.   Harris Defendants have been unjustly enriched and retention of the benefit would be inequitable.

        WHEREFORE Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its costs, prejudgment interest, and any further relief that this Court deems just and proper.

Count VI
Florida Deceptive and Unfair Trade Practices Act (In the Alternative)

80.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

81.   Harris Defendants' deceptive, unfair and commercially deceptive acts include, but are not limited to, a) Harris Defendants' knowledge that they could not develop, deliver and implement the new software; b) Harris Defendants' repeated assurances to Plaintiff that they would fully perform the contract and set compliance timelines which they knew could not be met; and c) Harris Defendants' failure to develop, deliver and implement the new software, and repeated requests for timeline modifications in order to deceive Plaintiff regarding the status of the new software.

82.   Harris Defendants acted in a deceptive and unfair manner and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Florida Statute 501.204 et seq.

83.   As a result of the Harris Defendants' actions, Plaintiff has suffered damages.

84.   Plaintiff is entitled to an award of attorney's fees and costs pursuant to section 501.2105, Florida Statutes.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, award Plaintiff its attorney's fees and costs, prejudgment interest, and any further relief that this Court deems just and proper.

Count VII
Promissory Estoppel (In the Alternative)

85.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

86.   Harris Defendants knew or should have known the scope of the work defined in Purchase Order Form 1002, the status of the development and implementation of the new software, and CrossPointe's failure to comply with the terms of the contract.

87.   Harris Defendants repeatedly promised full performance of Purchase Order Form 1002.

88. Harris Defendants knew or should have known that they could not comply with the terms of the contract, could not develop, deliver or implement the contracted new software, and otherwise lacked the capability to fully perform the contract.

89. Along with its assurances of full performance of the contract, Harris Defendants repeatedly asserted timelines for development, delivery and implementation of the new software. Harris Defendants failed to meet those timelines, resulting in Harris Defendants' proposing repeated modifications to the timelines. Timeline modifications were coupled with Harris Defendants' continued assurances of full performance of the contract.

90. Harris Defendants knew or should have known the proposed timelines could not be met.

91. Harris Defendants knew or should have reasonably expected its repeated promises, assurances, and representations would induce Plaintiff to action or forbearance.

92. Harris Defendants' repeated promises and assurances induced Plaintiff to action or forbearance. In reasonable reliance on Harris Defendants' representations, Plaintiff forbore its rights under Product Order Form 1002.

93. Injustice can be avoided only by enforcement of the promises, assurances, and representations against Harris Defendants.

94. Plaintiff's detrimental reliance on Harris Defendants' promises and assurances have caused damages.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment for damages against Harris Defendants, prejudgment interest, and any further relief that this Court deems just and proper.

Count VIII
Rescission (In the Alternative)

95.   Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 32.

96.   Plaintiff entered into Product Order Form 1002 with CrossPointe, LLC for the development, delivery, implementation and maintenance of new software.

97.   Plaintiff paid CrossPointe, LLC for the development, delivery and implementation of new software, totaling $4,150,000.00 by December 2014. Additionally, in 2013 and 2014, Plaintiff paid CrossPointe, LLC $400,000.00 in maintenance fees for Product Order Form 1002 and $720,000.00 for Product Order Form 1001.

98.   In June 2015, Harris Defendants purchased Product Order Form 1002 from CrossPointe, LLC in an APA, including all the rights, obligations, and liabilities under that contract.

99.   At the time of entering into the APA, Harris Defendants knew or should have known the scope of the work defined in Purchase Order Form 1002, the status of the development, delivery and implementation of the new software, and CrossPointe's failure to comply with the terms of the contract.

100.   Harris Defendants failed to develop, deliver and implement the new software.

101.   Plaintiff timely paid Harris Defendants maintenance fees for Product Order Forms 1001 and 1002. At the time maintenance fees were paid, the new software had not been developed, delivered and implemented as set forth in Product Order Form 1002.

102.   Harris Defendants voluntarily accepted and retained payments under the contract.

103.   Harris Defendants knew or should have known that they could not comply with the terms of the contract, could not develop, deliver or implement the contracted software, and otherwise lacked the capability to fully perform the contract.

104.   Harris Defendants knowingly made false statements and intentionally concealed material facts regarding performance and satisfaction of Product Order Form 1002. Harris Defendants falsely assured Plaintiff that they would complete the development, delivery and implementation of the new software specified in Product Order Form 1002.

105.   In conjunction with these representations, Harris Defendants repeatedly proposed timelines for performance of the contract which it knew or should have known could not be met. Despite knowing that they could not effectuate development, delivery and implementation of the new software, and despite having repeatedly failed to meet proposed performance timelines, Harris Defendants continuously assured Plaintiff they would fully perform the terms of the contract.

106.   Plaintiff has given notice to Harris Defendants of its intention to rescind the contract based on Harris Defendants' failure to perform the contract. Further, Plaintiff intends service of summons of this complaint to serve as notice of rescission of the aforementioned contract. Plaintiff hereby offers to restore all consideration furnished by Harris Defendants under the contract, on condition that Harris Defendants restore the consideration furnished by the Plaintiff in the sum of $5,500,000.00, inclusive of maintenance fees.

107.   Plaintiff has no other adequate remedy at law and is entitled to the right of rescission.

WHEREFORE, Plaintiff respectfully prays that this Court enter a judgment of rescission as to Product Order Form 1002 and provide such other relief that this Court deems just and proper.

Respectively submitted on August 18, 2017.

Sincerely,

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_____
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Exhibit "A"

CrossPointe Master License Agreement

Number: 1001

The following Master Terms and Conditions contained in this Agreement ("T&C's" or "Agreement") supplement and govern each Product Order Form Software End User Agreement ("Product Order Form") entered into at any time between CrossPointe, Inc. ("CrossPointe") and the Client identified below ("Client"). CrossPointe and the Client are individually referred to herein as a "Party" or collectively as the "Parties."

1. **Definitions.** Unless the context otherwise requires, the following definitions shall apply and are in addition to the definitions contained in other parts of this Agreement and in each Product Order Form:

"Agreement" means these T&C's and each Product Order Form referring to these T&C's and entered into by the Parties.

"CrossPointe Supported Products" or "Products" means the products specified by CrossPointe in a Product Order Form for as long as those products are eligible for Support by CrossPointe under Section 4 of this Agreement during the Support Period.

"Intellectual Property Rights" means all copyrights, patent rights, confidentiality rights, trade secret rights and trademark rights.

"License Fee" means the amount to be paid by the Client for the components of the System as identified in the Schedule.

"License Term" is perpetual, unless a shorter term is specified in a Product Order Form or the License is terminated pursuant to the Agreement.

"Major Release" means the version of a CrossPointe Supported Product denominated by the number before the decimal point in the release designation (e.g., 4.0 and 5.0 are each different Major Releases).

"Operating System" shall mean the third party foundation software required to communicate with the Client's computer hardware as identified in the Schedule.

"Price" means the total amount of License and Service Fees for the System as specified in the Client Product Order Form.

"Schedule" means the Product Order Form or Forms initially attached hereto, and/or subsequently added by consent of the Parties, which identify the elements of the System to be provided and the Services to be performed by CrossPointe or a third party under this Agreement.

"Services" means each of the types of services identified in a Product Order Form and rendered by CrossPointe during the period identified in that Product Order Form which may include training, maintenance, implementation services and conversions.

"Services Fees" means the particular fees for specific services identified in the Product Order Form.

"Software" shall mean the CrossPointe Supported Products or Products (including modifications and enhancements [and source and object code if the Client's Product Order Form calls for an in-house stand alone installation of the Software]) that comprise the proprietary application software and its accompanying documentation as identified in the Schedule.

"Software Maintenance Agreement" means an annual software support and maintenance contract between CrossPointe and the Client in consideration for such percentage of the then current License Fees of the CrossPointe Supported Products identified in the Product Order Form.

"Subscription Services" means each of the types of services identified in a Product Order Form and rendered by CrossPointe during the subscription period identified in that Product Order Form. (Support is not a Subscription Service.)

"Support Period" means the initial period of Support specified in a Product Order Form (60 days unless otherwise specified) and commencing on the initial delivery of the CrossPointe Supported Products ("Initial Support Period").

"System" shall mean the Software, Operating System and Third Party Software.

"Third Party" means the applicable third party owner of Products that are delivered to the Client under the Agreement or separate agreement with the third party owner.

"Third Party Software" shall mean proprietary software owned and supplied by third parties or to be supplied by CrossPointe as identified in the Schedule.

2. **License.** In accordance with the terms herein, CrossPointe grants to Client and the Client accepts from CrossPointe a personal, nonexclusive and nontransferable license to use the Software (including all object, source and executable codes related thereto if the Client's Product Order Form calls for an in-house stand alone installation of the Software) or provide the Client with a functional Application Service Provider license with respect to the Software (if the Client's Product Order Form calls for an "Application Service Provider" license) and/or System, as the case may be, within Brevard County, Florida, subject to the conditions and restrictions contained herein, with only up to the maximum concurrent users and maximum seats – per Subscription agreement as shown in the Product Order Form applicable, unless and until terminated hereunder. Client shall be entitled to license additional concurrent users at CrossPointe's then prevailing rates by written agreement of the parties. Except as otherwise provided in this Agreement, the Software and/or System shall be used only for Client's internal business needs. Except as otherwise provided in this Agreement, Client shall not permit any third party, to use the Software and/or System nor shall the Client grant any sublicense for the use of the Software and/or System. All modifications, enhancements and updates to the Software provided by CrossPointe shall become part of the Software and be subject to the terms and conditions herein (the "License"):

a. **Installation and Use.** The Client, or a third party service provider retained by the Client and certified by CrossPointe, may: i) install the Software upon computer hardware equipment owned or leased by such Client (if the Client's Product Order Form calls for an in-house stand alone installation of the Software) or ii) provide the Client with a functional Application Service Provider license with respect to the Software (if the Client's Product Order Form calls for an "Application Service Provider" license (defined as a centrally-hosted implementation of CrossPointe's Software which is shared by multiple end-user accounts) of the Software, in each case with the Client's use of the Software being only for the internal business needs of the Client. The Client acknowledges that its use of the Software and/or Third Party Software may be subject to additional licensing terms from the relevant Third Party, and that the Client is authorized to use the Software and Third Party Software subject to the terms of this Agreement and such additional licensing terms.

b. **Software Copies.** All copies of the Software (whether made by the Client or provided by CrossPointe) are subject to the provisions of this Agreement. The Client must maintain an accurate record of the locations of all copies of the Software, which record may be inspected by CrossPointe at any time.

c. **Documentation Copies.** The Client may make a reasonable number of copies of the CrossPointe Documentation. The Client may not copy Third Party Documentation unless specified in an addendum provided by the Third Party.

d. **Third Party Products Sublicensed by CrossPointe.** The Third Party Products sublicensed by CrossPointe may be used only with the Software and Systems shown on the applicable Product Order Form. If the reseller agreement terminates between CrossPointe and a Third Party: (1) the Client may continue to use all Third Party Products under the License for the License Term and (2) that Third Party will continue to be a third party beneficiary to the Agreement and may enforce its rights under the Agreement as the licensor of that Third Party's Product sublicensed by CrossPointe to the Client or the Third Party may enter into a distinct contract with the Client.

e. **Product Exchange.** During the Support Period CrossPointe will fulfill Client's request to exchange the CrossPointe Supported Products for other available CrossPointe Supported Products that have pricing, features and functionality similar to the Products licensed by Client (as reasonably determined by CrossPointe).

f. **Software Modifications.** The Client may use the CrossPointe Products to develop, own and use (for only the internal business needs of the Client) interfaces, Software modifications, or enhancements. CrossPointe and its Third Parties will continue to own all Intellectual Property Rights to any object code, executable code or source code developed by CrossPointe or its Third Parties (in any language translation whether or not developed by CrossPointe or its Third Parties). This Agreement and the Client will not restrict CrossPointe's or its Third Parties' independent development, use or licensing of any type of software. Unless authorized by separate agreement, the Client will not modify Third Party-owned Products unless otherwise agreed to in a separate Third Party License Addendum. Client developed software which enhances, supports, or modifies the CrossPointe Products ("Client Modifications") shall be owned by Client and shall promptly be submitted to CrossPointe for its review and analysis. Each such Client Modifications may be used by CrossPointe for its own use and for use by CrossPointe's other customers as a perpetual, irrevocable, nonexclusive right and license; provided, however, if CrossPointe, in its sole

discretion, decides to incorporate such Client Modifications into CrossPointe's standard product offerings or CrossPointe's Supported Products which CrossPointe makes available to its other customers, then Client may continue to use such Client Modifications pursuant to the License granted in this Agreement. Notwithstanding the foregoing, should CrossPointe incorporate such Client Modifications into its standard product offerings or its Supported Products then Client, by its execution of this Agreement, irrevocably assigns to CrossPointe all right, title and legal interests (including all rights of copyright, patent, and other intellectual property rights) in and to the Client Modifications, absolutely and in fee simple, including, but not limited to the right of perpetual, irrevocable, nonexclusive use and license and sublicense rights with respect to the Client Modifications, for its and its future customers' benefit, in each and all manner and circumstance, without any compensation due or payable to Client for such ownership rights with respect to all Client Modifications.

g. **Restrictions.** The Client may not rent, lease or re-license the Software or use the Software to provide data processing, outsourcing, service bureau, hosting services or training to third parties. The Client will retain and include on each copy of the Software, all titles, trademarks, and copyright and restricted rights notices. The Client will not disassemble, decompile, decode or reverse engineer the Software, except as expressly permitted by applicable law or contract for the CrossPointe Products. The restrictions in the Agreement concerning the use and confidentiality of the Software extend to any updates, upgrades, enhancements, new releases or support materials related to the Software and provided by CrossPointe or its Third Parties. Client is responsible for compliance with the Agreement by each member and employee of the Client, each user and any third party service provider retained by Client.

h. **U.S. Government restricted rights.** If Licensee is acting on behalf of any unit or agency of the United States Government ("Government"), the following provisions apply: (1) the software and documentation are provided to the Government with Restricted Rights, (2) use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and subparagraph (c)(2) of the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19.

i. **Price and Payment.** Client shall pay CrossPointe for the Software License granted herein, in the manner and as specified to in the initial and/or any subsequent Product Order Forms executed by Client pursuant to this Agreement (collectively the "Product Order Price").

All payments hereunder shall be made in United States Dollars. Unless otherwise stated herein, all invoices shall be due and payable within thirty (30) days of date of invoice. On any invoice not paid within sixty (60) days, CrossPointe may assess and Client shall pay a service charge accruing thereafter until the date of payment equal to the lesser of: (i) the rate of one and one-half percent (1.5%) per month or (ii) the maximum lawful interest rate applicable. In the event Client's account is in arrears for more than ninety (90) days for ANY reason, CrossPointe shall be entitled to immediately place Client on support hold. No Services, including Subscription Services, will be provided while Client is on support hold. Client shall remain on support hold until Client's account is paid current.

If the Client fails to pay the Product Order Price and/or License Fees (but not with respect to any failure of Client to pay any maintenance fees) and persists in such failure to pay the Product Order Price and/or License Fees for thirty (30) days after receiving written notice

thereof from CrossPointe, CrossPointe may terminate this Agreement and declare any unpaid amounts owed hereunder immediately due and payable. Client Modifications made to the Software by the Client with CrossPointe's advice or counsel shall be Client's or CrossPointe's property, as the case may be, pursuant to the circumstances described in Section 2(f) of this Agreement. Any modifications, enhancements or changes made to the Software by CrossPointe, whether under agreement with the Client or otherwise, shall be CrossPointe's sole property. Client Modifications made to the Software shall be subject to CrossPointe's warranty only if and when such changes are incorporated into the Software, CrossPointe's standard product offerings or CrossPointe's Supported Products, as generally distributed to CrossPointe's other customers. Upon any termination of this Agreement pursuant to this paragraph, the Client shall discontinue its use of, and shall return within 10 days, all copies of the Software and Documentation then in its possession. The Client's obligation to pay accrued charges and fees and to protect the confidentiality of the Software and Documentation shall survive termination. Cancellation of the license granted hereunder shall be in addition to and not in lieu of any other remedies available to CrossPointe. Any such termination shall also terminate CrossPointe's and Third Party Vendors' warranty and indemnity obligations and liabilities.

3. **Deliveries and Installation.** Promptly after receipt of the down payment of the Product Order Price, CrossPointe will deliver to the Client one copy of the Software (if the Client's Product Order Form calls for an in-house stand alone installation of the Software) and one copy of the Documentation. Except to the extent otherwise agreed to separately in writing by the Parties, the Client is responsible, at its expense, for installation of the Software (if the Client's Product Order Form calls for an in-house stand alone installation of the Software), user training, data conversion and other services.

4. **Support by CrossPointe.** During the Support Period, CrossPointe will provide the Client the following support ("Support"):

a. Repair, replace or provide The Client with an upgrade of the CrossPointe-Supported Products to comply with the Product Warranty under Section 7.

b. Make CrossPointe's standard telephone support available to persons authorized by the Client, including general technical information and assistance with problem determination, isolation, verification and resolution during the hours of 8 a.m. to 8 p.m. EST (excluding weekends and CrossPointe designated holidays).

c. Provide the Client updates, enhancements and new releases of the CrossPointe Supported Products when generally made available by CrossPointe for installation and use by the Client. (1) CrossPointe will provide support for the immediate prior Major Release for a period of 12 months after general availability of the then current Major Release. (2) CrossPointe will alert Client at least 6 months before the scheduled termination of Support and the Product Warranty for any Major Release. CrossPointe may immediately terminate Maintenance and the Product Warranty for all CrossPointe Supported Products if Client does not renew Support for the CrossPointe Supported Products designated on a Product Order Form. Client may elect to purchase at Client's expense from the applicable Third Party available support for the Third Party Products specified in a Product Order Form as not maintained or supported by CrossPointe. CrossPointe will have no obligation to provide support for any Client Modifications until such time as such Client Modifications have been

incorporated into the CrossPointe Supported Products which have been made available to other CrossPointe customers.

d.   CrossPointe shall exercise reasonable skill and care in the provision and performance of support. Dates given for performance of Services are good faith estimates only.

e.   To the extent it is included in the Product Order Form, CrossPointe will provide routine Support for the Third Party Software. In addition, CrossPointe shall communicate with the respective Third Party in an attempt to obtain and provide to Client any applicable corrections to the Third Party Software. The Client shall, however, be responsible for ensuring that key personnel and new staff additions are properly trained on the use and general maintenance of the Third Party Software.

5. Client Responsibilities. CrossPointe Support and the Product Warranty require that:

a.   Client shall ensure its hardware is kept in good working order in accordance with the manufacturer's recommendations and requirements.

b.   Client shall identify and provide "key" individual contacts who have been approved by CrossPointe to serve as Client's first line of support on routine System issues for the Client's authorized users and to serve as a liaison between the Client and CrossPointe on the issues which need to be communicated to CrossPointe.

c.   Client shall provide CrossPointe access to the Client's system via a mutually agreed upon method. Such access shall allow CrossPointe to conduct an audit of the Software as required by CrossPointe, from time to time, and to support, monitor and test Client's system.

d.   Client shall take all reasonable steps to ensure that no virus is loaded on the System. Virus diagnosis and removal services are not covered by Support and are billable at CrossPointe's then prevailing rates.

e.   Client shall install all new releases of the Software within 12 months after being provided by CrossPointe. If the installation of a new release of Software also requires a new release of the Operating System or Third Party Software, the Client shall also install such new release(s) at the same time that it installs any such new release of the Software, so that the newly supported CrossPointe release will be functional.

f.   The Client shall be responsible, to the extent Client deems necessary, for the following, unless otherwise set forth in the Schedule: adherence to specified electrical requirements; running all cable and phone connections for the System; all data conversion, media, and other charges related to the transfer of the Client's data; all networking design and administration charges relating to the set-up and support of the Client's network.

g.   The Client shall use the Software and Third Party Software only in accordance with the terms and conditions set forth in this Agreement. Third Party Software and CrossPointe Software may only be used within Brevard County, Florida or on portable hardware owned by the Client and utilized by its employees.

h.   The Client shall provide CrossPointe reasonably available information and technical assistance.

i.   The Client's installation of all or any part of the Software shall be in accordance with the Documentation.

j.   If CrossPointe reasonably determines that a Client reported problem is either (1) not caused by the CrossPointe Supported Products or (2) due to the Client's modification of the Products or noncompliance with the Documentation, and CrossPointe is reasonably able to correct the problem at Client's request, then Client will reimburse CrossPointe for that requested correction at CrossPointe's then current hourly rates (CrossPointe will notify Client before incurring those expenses).

6. Service Fees, Renewal and Reinstatement. [This Section 6 pertains only to CrossPointe Supported Products having a perpetual License Term. Service fees for CrossPointe Supported Products that have a shorter, stated License Term, are payable in the amounts and on the periodic payment dates described in the Product Order Form for those Products.] There is no Service Fee for the CrossPointe Supported Products during the Initial Support Period. While CrossPointe provides Support to other Clients, Client may renew Support for the CrossPointe Supported Products for one-year renewal periods by paying CrossPointe the applicable amounts under this Section 6 and the Product Order Form. CrossPointe will invoice the Client approximately 90 days before the end of the then current Support Period and notify the Client of non-payment approximately 10 days before the Support renewal date. CrossPointe may terminate Support if all past due, undisputed invoices are not paid by the Support renewal date. The Product Order Form states the initial fee after the Initial Support Period and relevant dates for annual Support of the CrossPointe Supported Products (excluding Third Party Products). Where applicable, fees for each Third Party Product supported by CrossPointe after the Initial Support Period will be included on the Product Order Form. Client will reimburse CrossPointe for reasonable travel and out-of-pocket expenses incurred when rendering on-site Support or Product Warranty services (CrossPointe will notify Client before incurring those expenses). If Support has terminated because of non-renewal or , and Client desires to reinstate Support, CrossPointe will reinstate available Support within 24 months after termination of Support if Client pays CrossPointe: (a) all undisputed invoices and (b) the annual Support fee for the next one year Support Period.

7. Product Warranty. During the Support Period CrossPointe warrants that (the "Product Warranty"):

Media. The Product media as provided by CrossPointe will be free of material defects.

Viruses.   Before Product delivery by CrossPointe, CrossPointe will use up-to-date, commercially available virus scanning and cleaning products, and will not, based on the results of that scanning and cleaning, deliver to the Client Products containing any computer viruses, time bombs, harmful and malicious data, or other undocumented programs which inhibit Product use and operation.   When properly installed, the unmodified Software provided by CrossPointe for the CrossPointe Supported Products will operate materially and substantially as described in the Documentation for that Software.

THE WARRANTIES REFERENCED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CROSSPOINTE DOES NOT WARRANT THAT THE SOFTWARE IS FREE

OF NONMATERIAL DEFECTS. CROSSPOINTE DOES NOT REPRESENT THAT THE SYSTEM WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

8. Title.

a. CrossPointe warrants that it owns all rights, titles, and interests in the CrossPointe Supported Products and the software used by CrossPointe for the Subscription Services, or has the authority by license, sufficient to grant Client the License and fulfill CrossPointe's obligations under the Agreement. Client's exclusive remedies for the breach of this Section 8 by CrossPointe are described in Sections 9 and 11.

b. The Software, Third Party Software, Operating System, all programs developed by CrossPointe for the Client hereunder, and all copies thereof are proprietary to CrossPointe or the respective Third Party and title thereto remains with CrossPointe or such Third Party. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software, Third Party Software, Operating System or any programs developed by or at Client's request are and shall remain in CrossPointe or the respective Third Party. Client shall not modify, reverse engineer, assemble or decompile, in whole or in part, the Third Party Software or Operating System. Client shall not sell, license, transfer, publish, disclose, display or otherwise make available the Software, Third Party Software or Operating System or copies thereof to any other party, individual or entity. Client agrees to secure and protect the Software, Third Party Software and Operating System and copies thereof in a manner consistent with the maintenance of CrossPointe's and/or the third party's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to the Software, Third Party Software or Operating System to satisfy its obligations hereunder. Violation of any provision of this paragraph shall entitle CrossPointe to terminate this Agreement and the Software, Third Party Software and Operating System licenses granted hereunder.

9. Remedies. The Client's exclusive remedies for breach of the Product Warranty or Support are:

a. CrossPointe will provide Support to repair or replace the Products to enable the Products to comply with the Product Warranty.

b. If CrossPointe does not comply with Section 9(a) within the Cure Period (as defined below), the Client may recover direct damages for the CrossPointe Supported Products subject to the damage claim, including up to a refund of the License Fees or Service Fees paid by the Client to CrossPointe, subject to the time periods and limitations described in Section 14. Client may also elect to terminate Support, the Subscription Services, the License or the Agreement if CrossPointe's breach is not cured within the Cure Period. CrossPointe may terminate the License and the Agreement if the undisputed License Fees are not paid by the Client within 30 days after notice of late payment or if the Client does not cure any other material breach of the Agreement within 90 days after notice of breach. CrossPointe may terminate Support and any Subscription Services if CrossPointe's undisputed invoices are not paid within 30 days after notice of late payment. Upon termination of the License by CrossPointe for non-payment of the Product Order Price, the License Fees or Service Fees, then Client shall promptly destroy or return the Products to CrossPointe (Third Party Products must be returned to CrossPointe or applicable Third Party within 10 days of the

termination notice). If the License and the Agreement terminate as described in this Section 9 other than for non-payment of the Product Order Price, the License Fees or Service Fees, then Client shall (if the Client's Product Order Form calls for an in-house stand alone installation of the Software) be permitted to retain and continue its right to use, for its use only, the source, object and executable Software codes, pursuant to the term, restrictions and conditions contained in this Agreement. "Cure Period" means the period of time reasonably required after notice from Client for CrossPointe to cure a breach in accordance with CrossPointe's standard Support practices. Sections 1, 2, 5, 8b, and 10 through 22 shall survive any termination of the Agreement.

10. **Confidential Information.** The Client acknowledges that the System is a confidential and proprietary trade secret of CrossPointe. The Client, including the Client's agents and employees, shall keep the Software and all related confidential materials in strictest confidence. "Confidential Information" means object code, source code and benchmark tests for the Products, pricing, non-standard CrossPointe contract terms, Client data and all other information reasonably believed to be confidential, but excludes:

a. Information made available to the general public without restriction by the disclosing Party or by an authorized Third Party;

b. Information known to the receiving Party independent of disclosures by the disclosing Party;

c. Information independently developed by the receiving Party without access to or use of the disclosing Party's Confidential Information; and

d. Information that the receiving Party may be required to disclose pursuant to subpoena or other lawful process, provided that the receiving Party notifies the disclosing Party in a timely manner to allow the disclosing Party to appear and protect its interests, and such disclosure complies with applicable law.

Client's Confidential Information also excludes any new features or functionality suggested by Client for the Products or Subscription Services. The Parties will use reasonable efforts to keep each other's Confidential Information secret and will use that information only to fulfill the rights and obligations under the Agreement. Either Party may disclose in confidence the other Party's Confidential Information on a need-to-know basis to other persons within the control of the disclosing party, and the Party making that disclosure will be responsible for that person's compliance with these restrictions on disclosure and use.

11. **Infringement Indemnity and Remedies.** CrossPointe will, at its expense, retain counsel and defend any suit or claim brought against the Client and will indemnify the Client against any Third Party damage claims that the CrossPointe Supported Products as delivered by CrossPointe or software used by CrossPointe for the Subscription Services infringe upon any Third Party's Intellectual Property Rights enforceable under Canadian, United States or state law or international copyright treaty, if Client: (a) promptly notifies CrossPointe after Client learns of the suit or claim, and no delay by Client in providing that notice materially prejudices the rights of CrossPointe; (b) gives CrossPointe authority to defend or settle the suit or claim (provided that CrossPointe does not agree to any settlement that materially prejudices Client); (c) gives CrossPointe all available non-privileged information reasonably requested by CrossPointe concerning the suit or claim; and (d) complies with this Section 11 and reasonably

cooperates with CrossPointe in the defense (CrossPointe will reimburse Client's reasonable out-of-pocket costs of that requested cooperation). The Client may also retain counsel to participate in the defense ("Client's Counsel"). CrossPointe will reimburse Client for the reasonable fees and expenses of Client's Counsel only if CrossPointe fails to continue to retain legal counsel as required by this Section 11. CrossPointe shall have the right to control the defense of all such claims, lawsuit and other proceedings. In no event shall Client make any prejudicial statement in relation thereto, or settle any such claim, lawsuit or proceeding without CrossPointe's prior written approval. Client shall, if and when requested by CrossPointe, and at CrossPointe's expense, promptly provide all needed assistance in the defense of such claims. If as a result of any claims of infringement by the Software against any patent, copyright, license or the property right of a Third Party, CrossPointe or Client is enjoined from using the Software, or if CrossPointe believes that the Software is likely to result in a judgment of infringement, CrossPointe at its option and expense may: (i) procure the right for Client to continue to use the Software; (ii) replace or modify the Software so as to make it non-infringing with similar functionality; or (iii) discontinue the License granted herein and refund to Client 50% of the respective License Fees paid hereunder with respect only to the software component of the System deemed likely in a judgment of infringement and which has been paid during a three year period prior to CrossPointe making this election under Section 11. CrossPointe will have no obligations or liability for any suit or claim of infringement based on the Client's use of a superseded or Client-altered release of the CrossPointe Supported Products to the extent that the obligation or liability will be voided by the use of a then current release of the CrossPointe Supported Products which CrossPointe provides to Client. Client will reasonably cooperate with CrossPointe to mitigate infringement damages. The foregoing states the entire, sole, and exclusive liability of CrossPointe with respect to infringement on any Third Party property rights by the Software or any parts thereof. This indemnity shall not apply if the infringement is caused in whole or in part by modifications to the System made by Client or other non-CrossPointe personnel; use of the Software in a manner other than in accordance with the Agreement or use of the Software in combination with software not supplied by CrossPointe under the Agreement.

12. No Direct Solicitation of Employees. During the 12 months after the initial License of the Products, neither Party (or its recruiters acting on the Party's behalf) will directly solicit the employment of any employee of the other Party whose job responsibilities relate to the Products, Support or Subscription Services without written consent by both parties. Notwithstanding the foregoing, each party hereto shall be permitted to place general employment advertisements in any local media and shall be allowed to utilize professional employment recruiters, as it deems advisable.

13. Excusable Delay. Neither Party will be in default of its obligations under the Agreement or liable to the other for any noncompliance arising from causes beyond the reasonable control of the Party, including without limitation, fires, floods, natural disasters. Each Party will use reasonable efforts to resolve promptly any type of excusable delay.

14. Limitations of Liability. In no event will CrossPointe, CrossPointe's Third Parties or the Client be liable for indirect, incidental, punitive, exemplary, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either Party, whether in contract or tort, even if the other Party has been advised of the possibility of such damages. Neither Party will seek or apply for such damages. CrossPointe's and its Third Parties' aggregate liability for damages to the Client for the Agreement, the Products, the Product Warranty, Support or the Subscription Services, whether in contract or tort, shall be limited to

actual direct money damages in an amount not to exceed: (a) the License Fees paid by the Client to CrossPointe for the Products subject to the damage claim if the claim arose within one year after the date of the earliest Product Order Form for those Products, (b) the most recent annual Service Fees paid by Client to CrossPointe for the Products subject to the damage claim if the claim arose more than one year after the date of the earliest Product Order Form for those Products or (c) the most recent annual Subscription Services Fees paid by Client to CrossPointe for the Subscription Services subject to the damage claim. The Parties will each use reasonable efforts to mitigate their damages. These limitations represent the agreed allocation of risk. THE FOREGOING LIMITATION OF LIABILITY SHALL REMAIN IN FULL FORCE AND EFFECT REGARDLESS WHETHER CLIENT'S REMEDIES HEREUNDER HAVE FAILED THEIR ESSENTIAL PURPOSE.

15. Assignment. Client may not assign the License or the Agreement or transfer any rights or obligations under the Agreement without CrossPointe's consent under an assignment or leasing addendum, such consent may be unreasonably withheld. Any assignment or transfer in violation of this Section 15 is void. Any valid assignment of Client's rights and obligations in relation to the Software will require an additional Software License Fee paid to CrossPointe at CrossPointe's then prevailing rates unless otherwise specified. Assignments of this Agreement by CrossPointe shall not be made without prior notification to the Client.

16. Publicity. Either Party may (in any presentations, press releases, advertising or publicly-disseminated materials) refer to the other Party, to the Products licensed by the Client, or to background information, including for example: CrossPointe competitors and competing products considered by the Client, and the Client business needs and reasons for selecting CrossPointe and its Products. Before disseminating that information publicly, the disclosing Party will review the factual content of the disclosures with the other Party.

17. Remedies. Promptly after the written request of either Party, each of the Parties will appoint a designated representative to meet promptly in person or by telephone to attempt to resolve in good faith any dispute concerning the Products, Support, Subscription Services, CrossPointe's invoices or the Agreement. If the designated representatives do not resolve the dispute, then either Party may request that an officer of CrossPointe and an officer of Client meet within 15 days in person or by telephone to review and attempt to resolve the dispute in good faith. No litigation, arbitration or other action relating to the Products, Support, Subscription Services, CrossPointe's invoices or the Agreement may be brought: (a) if the injured Party has not participated or agreed to participate in the above meetings or (b) if the cause of action has been known by the injured Party more than 2 years. Each Party will pay (without reimbursement) its own legal fees and expenses incurred in any dispute. The Parties must comply with this Section 17 for any dispute, controversy or claim arising out of or relating to the rights and obligations of a party under this Agreement or the validity, interpretation, breach or termination thereof, including claims seeking redress or asserting rights under applicable law.

18. Notices. All notices required under the Agreement must be in writing and delivered electronically or by other method providing for proof of delivery, to the attention of the Party's Chief Technology Officer, at the address on the applicable Product Order Form (unless a different address has been designated by notice to the other Party).

19. Escrow. A current version of the Software source code and the accompanying documentation have been placed into escrow with a third party. Source code which has been

escrowed is eligible for release in the event CrossPointe liquidates or shall be declared bankrupt. If Client receives source code under the above circumstances, such source code shall be deemed to be Software and subject to the terms and conditions herein. The source code is to be used solely for Client's maintenance of the Software.

20. General.

a. Unless otherwise specifically agreed in writing by an authorized representative of Client and a Vice President or higher ranking officer of CrossPointe, this Agreement will solely govern any present or future purchases/licenses by Client from CrossPointe. Any additional Schedules shall be attached and incorporated into this Agreement by reference.

b. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement, along with the respective Product Order Forms and attachments, is the complete and exclusive statement of the Agreement between the parties with respect to the System and shall supersede all prior proposals, understandings and all other agreements, oral and written. The terms and conditions in this Agreement shall take precedence over the terms and conditions included in all purchase orders and other documentation submitted by Client pursuant to this Agreement. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

c. Neither party hereto shall be liable or deemed in default for any delay or failure in performance hereunder resulting from any cause beyond its reasonable control.

d. This Agreement, and any action arising out of or related to it, shall be governed by and construed in accordance with the laws of the State of Florida; however, except as otherwise expressly stated herein, the parties specifically waive and disclaim the applicability of the Uniform Commercial Code; Unfair Trade Practices Act, Uniform Electronic Transactions Act, and Uniform Computer Information Transactions Act to this Agreement. Except for Client and CrossPointe, no other party may sue or be sued under this Agreement.

e. If any provision of this Agreement is held to be ineffective, unenforceable or illegal for any reason, such decision shall not affect the effectiveness, validity or enforceability of any or all of the remaining provisions hereof, and if any provision of this agreement is held to be ineffective, unenforceable or illegal with respect to particular circumstances, such provision shall remain in full force and effect in all other circumstances.

f. This Agreement shall be binding upon and inure to the benefit of only the parties hereto and their respective successors and permitted assigns.

g. The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of any further right hereunder.

h. All communications or notices permitted or required to be given or served under this Agreement shall be in writing, shall be addressed to the other Parties at the appropriate Party's address or as set forth below, and shall be deemed to have been duly given or served if delivered in person or deposited in the United States mail, certified mail, return receipt requested.

i. This Agreement shall become effective upon the signature hereof by an authorized representative of the Client and CrossPointe and receipt by CrossPointe of the initial payment specified herein.

j. All services provided by CrossPointe will be provided as an independent contractor, and neither Party will be, or represent itself to be, the franchiser, franchisee, agent or legal representative of the other Party.

k. The Agreement may be amended only in writing signed by the Parties, except that CrossPointe may, upon notice to Client and without Client's signature, amend a Product Order Form to correct errors without increasing the License Fees. All purchase orders, prior agreements, representations, statements, requests for proposal, proposals, negotiations, understandings and undertakings concerning the Products, Support or Subscription Services are superseded by the Agreement.

21. **Jurisdiction, Service of Process.** Any proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Florida, Leon County, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Florida, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Process in any proceeding referred to in the first sentence of this section may be served on any Party anywhere in the world.

22. **Taxes and Duties.** The charges covered by the License are exclusive of any tariffs, duties or taxes imposed or levied by any government or governmental agency in connection with this agreement. With the exception of taxes imposed upon CrossPointe which are based upon net income, Client as licensee shall, unless otherwise exempt from the payment of the following described taxes, be liable for payment of all such taxes, however designated, levied or based on the Software, its charges or its use or on this agreement, including without limitation state or local sales, use, VAT, and personal property taxes.

23. **Maintenance Services.** The annual charges to Client for CrossPointe's routine software maintenance and product support will be specified on the most recent Product Order Form. This applies to products owned and developed by CrossPointe on the Product Order Form and not Third Party Software maintenance fees.

24. **Governing Law.** This Agreement will be governed by and construed under the laws of the State of Florida without regard to conflicts-of-laws principles that would require the application of any other law.

CROSSPOINTE, INC.

CLIENT

Joan M. Keebler (signature)
(Authorized Signature)

(Authorized Signature)

Joan M. Keebler
(Printed Name)

Dr. Richard A. DiPatri
(Printed Name)

CEO and President
(Title)

Superintendent
(Title)

7/11/02
(Date)

(Date)

Post Office Box 82107
(Street Address Line #1)

2700 Judge Fran Jamieson Way
(Client Street Address Line #1)

(Street Address Line #2)

(Client Street Address Line #2)

Mobile, Alabama 36689
(City, State, Postal Code)

Viera, Florida 32940-6999
(Client City, State, Postal Code)

Brevard County
(Client Jurisdiction of Incorporation)

Exhibit "B"

educational IBIN data resources

Product Order Form 1002

Prepared for: Judy Preston
Associate Superintendent of Financial Services
Brevard Public Schools
2700 Judge Fran Jamieson Way
Viera, FL 32940

Date Prepared: April 2, 2013

This Product Order Form 1002 is entered into by EDR, LLC, a Florida Limited Liability Company, and the "Client" identified above (collectively "the Parties"), and is effective as of the date signed by CLIENT ("Effective Date"). It will be affixed to and become part of the Master License Agreement signed by Brevard Public Schools on July 17, 2002. In the event that this schedule conflicts with previous schedules, the most current schedule will control.

I. Product Listing

Human Resources/Payroll			License Fee
Personnel Administration Budget Forecasting Position Control	Payroll Staff Development	Job Assignments (Future File)	See Below
Employee Portal			**License Fee**
Employee Information Electronic Contracts	Time & Attendance Leave Request		See Below
Financial Information			**License Fee**
Accounts Payable Accounts Receivable Cash Receipts	Budget Management Budget Preparation General Ledger	Project Management Purchasing	See Below
Vendor Portal			**License Fee**
Online Bid Request	Payment Status		See Below
Supply Chain			**License Fee**
Capital Assets	Warehouse Operations		See Below
Enterprise Information Portal (EIP)			**License Fee**
Finance (EIP) Human Resources (EIP) Payroll (EIP)	Worksheets Ad Hoc Query Data Warehouse	Reporting Analytics Dashboards	See Below
Workflow Engine and Project Tasks			**License Fee**
Role-based Individual Level	Approval Queue Department Level	Escalation Policy	See Below

II. Maintenance

Maintenance will be an additional $200,000.00 a year for two (2) years beginning July 1, 2013, for the EDR Products listed in this Product Order Form. This will be in addition to the current annual maintenance fee of $360,000.00 from Product Order Form 1001. Maintenance guaranteed not to exceed $560,000.00 between July 1, 2015, through June 30, 2018, for the products listed on Product Order Form 1001 and 1002.

III. Project Tasks

Implementation Services to include:
- Project Management – 35 days
- Installation – Included
- Workflow Implementation – Included
- Report Development – Quantity 20
- Security Setup – Included
- Training—Train the Trainer – 40 days
- Documentation – Included

IV. Payment Terms

	Software and Implementation Services
Gross Fees	$5,200,000.00
Total Due	$5,200,000.00

Payments are due upon the following schedule:

$ 600,000.00	on or before April 16, 2013
$ 2,250,000.00	due on or before July 30, 2013
$ 2,350,000.00	due on or before July 30, 2014

*Quote valid until April 24, 2013.

Note: Travel and expenses are billed per visit in arrears and are net 20 days. Additional training days may be purchased at a rate of $1,350 a day through June 30, 2015.

THE PARTIES AGREE TO THE TERMS SET FORTH IN THIS PRODUCT ORDER FORM

For EDR, LLC

E. V. Davis
(Authorized Signature)

E.V. Davis
(Printed Name)

Board Chairman
(Title)

750 S. Orlando Ave. Suite 201B
Company Address

Winter Park, FL 32789
City, State, Zip Code

4-10-13
Date

For Brevard Public Schools

Barbara A. Murray
(Authorized Signature)

Dr. Barbara A. Murray
(Printed Name)

School Board Chairman
(Title)

2700 Judge Fran Jamieson Way
District Address

Viera, FL 32940
City, State, Zip Code

4-12-13
Date

(signature)
(Authorized Signature)

Dr. Brian T. Binggeli
(Printed Name)

Superintendent
(Title)

2700 Judge Fran Jamieson Way
District Address

Viera, FL 32940
City, State, Zip Code

4-9-13
Date

ASSET PURCHASE AGREEMENT

by and among

N. HARRIS COMPUTER CORPORATION
as IP Purchaser,

HARRIS LOCAL GOVERNMENT SOLUTIONS INC.
as U.S. Purchaser,

CROSSPOINTE LLC
as Seller,

and

JOAN M. STEWART,
as Warrantor.

Dated as of June 26, 2015

<u>ASSET PURCHASE AGREEMENT</u>

THIS AGREEMENT is made as of the day of June 26, 2015 by and among N. Harris Computer Corporation, an Ontario corporation (the "**IP Purchaser**"), Harris Local Government Solutions Inc., a Delaware corporation (the "**U.S. Purchaser**"), Crosspointe LLC, an Alabama limited liability company (the "**Seller**") and Joan M. Stewart, an individual residing at 5820 Fairfax Road, South, Mobile, Alabama 36608 and the sole member of Seller (the "**Warrantor**").

WHEREAS, the Seller is engaged in the Business (as such term is hereinafter defined); and

WHEREAS, the Seller desires to sell, and the IP Purchaser desires to purchase, the intellectual property assets pertaining to the Business upon and subject to the terms and conditions hereinafter set forth; and

WHEREAS, the Seller desires to sell, and the U.S. Purchaser desires to purchase, certain of the other assets pertaining to the Business upon and subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained and for other good and valuable consideration the receipt and sufficiency of which is mutually acknowledged and intending to be legally bound hereby, the parties hereto agree as follows:

1. **INTERPRETATION**

1.1 **Definitions**. In this Agreement, unless something in the subject matter or context is inconsistent therewith:

"**Agreement**" means this agreement and all schedules and exhibits hereto and all amendments made hereto and thereto by written agreement between the Seller, the IP Purchaser, the U.S. Purchaser, and the Warrantor.

"**Assets**" means the assets and undertakings referred to or described in Sections 2.1 and 2.2, but not including the Excluded Assets.

"**Assignment and Assumption Agreement**" has the meaning set out in Section 5.1(a)(iv).

"**Assignment Exceptions Contracts**" has the meaning set out in Section 2.10.

"Assumed Contracts" means the Contracts of the Seller listed in Schedule L.

"Balance Sheet" means the balance sheet of the Seller as at the Closing Date prepared by Purchasers in accordance with GAAP, consistently applied.

"Balance Sheet Date" means December 31, 2014.

"Benefit Plan" means any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each "employee benefit plan", within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA) which is maintained, contributed to, or required to be contributed to, by the Seller or any affiliate of the Seller for the benefit of any employee, or with respect to which the Seller or any affiliate of the Seller has or may have any liability or obligation.

"Business" means the business carried on by or on behalf of the Seller as at the Closing Date, including all business being planned and all inactive lines of business previously carried on by the Seller prior to the Closing Date that the Seller has rights to as of the Closing Date.

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in the State of Florida or the State of New York.

"Claims" means, collectively, all losses, damages, expenses, fines, penalties, judgments, demands, obligations, liabilities, claims and demands, of any nature or kind whatsoever, and all legal fees and expenses related thereto.

"Closing Date" means the date hereof, or such other date as may be agreed to in writing between the Seller and the Purchasers.

"Closing Date Balance Sheet" means the Balance Sheet as at the Closing Date.

"Closing NTA" has the meaning set out in Section 2.6(b).

"Closing Payment" has the meaning set out in Section 2.4(a).

"Code" means the Internal Revenue Code of 1986, as amended.

"Collected Accounts Receivable" means the accounts receivable of the Seller received and collected by the U.S. Purchaser from the Closing Date until three Business Days prior to the date that is 180 days following the Closing Date.

"Contracts" means any contract, agreement, entitlement, commitment or license by which the Seller is bound including, without limitation, all licenses, support and maintenance contracts applicable to the Software.

"Developers" has the meaning set out in Section 3.1(j)(i).

"Direct Claims" has the meaning set out in Section 4.4.

"Employment Agreements" has the meaning set out in Section 5.1(a)(vi).

"Environmental Laws" has the meaning set out in Section 3.1(ff).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" has the meaning set out in Section 2.8(g).

"Estimated NTA" has the meaning set out in Section 2.6(a).

"Excess" has the meaning set out in Section 2.6(c).

"Excluded Assets" means the property and assets described in Section 2.3.

"Financial Statements" has the meaning set out in Section 3.1(g)(i).

"Hazardous Substances" has the meaning set out in Section 3.1(ff).

"Holdback Amount" has the meaning set out in Section 2.4(b);

"Holdback Release Date" means the ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮▮▮▮▮▮, subject to the extension in connection with finalization of the Closing Date Balance Sheet to be determined pursuant to Section 2.6(b);

"Indemnification Threshold" has the meaning set out in Section 4.1(a)(iii);

"Intellectual Property" has the meaning set out in Section 2.1(b).

"Interim Date" means February 28, 2015.

2.   **SALE AND PURCHASE OF ASSETS**

2.1   **Purchase and Sale of Software and Intellectual Property.**

Upon and subject to the terms and conditions hereof, the Seller will sell, convey, assign and transfer in perpetuity to the IP Purchaser free and clear of all Liens, other than Permitted Liens, and the IP Purchaser will purchase, wherever such assets are located and whether such assets are tangible or intangible, and whether or not any of such assets have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's books or financial statements:

(a)   the Software and all intellectual property rights worldwide in the Software including, but not limited to, the exclusive world-wide right to develop, modify, market, sell, distribute and install the current and future releases of the Software; and

(b)   all of the intellectual property owned by the Seller and used or currently being developed for use by the Seller and all rights of the Seller therein, worldwide, whether registered or unregistered (collectively with the Software, the "**Intellectual Property**"), including without limitation, the exclusive world-wide rights to develop, modify, market, sell, distribute and install all current and future releases of the Software and its products and:

(i)   **Copyrights** - all copyrights owned by the Seller, including without limitation, all copyrights in and to the computer software programs listed in Schedule C, including the Software and all applications and registrations of such copyrights;

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(ii) **Trademarks; Domain Names** - all trademarks, tradenames, service marks, brand names, logos, domain names or the like owned by the Seller, whether used in association with wares or services, including without limitation, those trademarks listed in Schedule C and all applications, registrations, renewals, modifications and extensions of such trademarks and domain names;

(iii) **Patents** – all patents, patent applications and other patent rights, if any, of the Seller;

(iv) **Technology** - all technology created, developed or acquired by the Seller whether or not patented or patentable and whether or not fixed in any medium whatsoever, including without limitation, all inventions, know how, techniques, processes, procedures, methods, trade secrets, research and technical data, records, formulae, designs, industrial designs, sketches, patterns, databases, specifications, schematics, blue prints, flow charts or sheets, equipment and parts lists and descriptions, samples, reports, studies, findings, algorithms, instructions, guides, manuals, and plans for new or revised products and/or services; and

(v) **Licenses** - all licenses, sub-licenses and franchises listed in Schedule C in which the Seller is a licensee or a licensor of intellectual property of a nature described in paragraphs (i) - (iv).

2.2 **Purchase and Sale of Other Assets**. Upon and subject to the terms and conditions hereof, the Seller will sell, assign and transfer to the U.S. Purchaser free and clear of all Liens, other than Permitted Liens, and the U.S. Purchaser will purchase from the Seller as a going concern, as of and with effect from the opening of business on the Closing Date, the following assets, wherever such assets are located and whether such assets are tangible or intangible, and whether or not any of such assets have any value for accounting purposes or are carried or reflected on or specifically referred to in Seller's books or financial statements:

(a) All computer and other equipment and accessories and supplies of all kinds owned by the Seller whether located in or on the premises of the Seller or elsewhere (except to the extent any of the foregoing are or

relate to Excluded Assets) including, without limitation, those items listed in Schedule B;

(b) All right, title and interest of the Seller in, to and under the Assumed Contracts including the full benefit of all unfilled orders received by the Seller;

(c) All prepaid expenses and deposits relating to the Assets;

(d) All inventory listed on Schedule F;

(e) The full benefit of all representations, warranties, guarantees, indemnities, undertakings, certificates, covenants, agreements and the like and all security therefore received by the Seller on the purchase or other acquisition of any part of the Assets;

(f) All books, records or files of the Seller including, without limitation all financial, production, personnel, sales and customer records (except to the extent any of the foregoing are or relate to Excluded Assets);

(g) All cash, term or time deposits owned or held by or for the account of the Seller;

(h) All accounts receivable, trade accounts, notes receivable, book debts and other debts due or accruing due to the Seller (except to the extent any of the foregoing are or relate to Excluded Assets), all of which are listed in Schedule J hereto;

(i) All claims, choses in action, causes of action and judgments relating to the Assets;

(j) All certifications, franchises, approvals, licenses, orders, registrations, certificates, and other similar rights obtained from any governmental authority or professional or trade organization and all pending applications therefor;

(k) All customer and supplier lists and all rights to the telephone and facsimile numbers;

(l) All rights to insurance policies covering the alleged or actual damage, destruction or impairment of assets (including, but not limited to, bodily injury) or other rights described in Section 2.1 and this Section 2.2,

which damage, destruction or impairment occurred on or prior to the Closing Date;

(m)   All work in process of the Seller relating to the Business;

(n)   That portion of the Seller's goodwill related to the Business, including the Software;

(o)   All rights of the Seller under any non-compete agreements;

(p)   All rights of the Seller in and to the Leased Premises under the Lease; and

(q)   All other rights related to the Business and the Assets.

2.3   **Excluded Assets**. From and after the Closing Date, the Seller shall retain all of its right, title and interest in and to, and there shall be excluded from the sale, conveyance, assignment or transfer to Purchasers hereunder, and the Assets shall exclude the following assets and properties:

(a)   Life insurance proceeds receivable in respect of the life of any Principal;

(b)   Income taxes refundable and all refundable sales taxes, excise taxes, municipal taxes and like taxes and interest thereon refundable to the Seller in respect of any period ending prior to the Closing Date;

(c)   All notes receivable, or other debts due or accruing due to the Seller from any Principal;

(d)   All books and records relating to the Excluded Assets and the charter, taxpayer and other identification numbers, seals, minute books, unit transfer records and other documents related to the organization, maintenance and existence of the Seller as a legal entity, including without limitation, all historical tax filings of the Seller;

(e)   All of the Seller's rights under this Agreement;

(f)   All rights, duties and obligations of the Seller relating to any and all employment and consulting agreements of any nature (other than any Employment Agreements in the form of Schedule K to be entered into in connection with this Agreement as set forth on Schedule G);

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

HARRIS LOCAL GOVERNMENT SOLUTIONS INC.

By: _____

Name: Jerry Canada, Jr.

Title: Vice President

N. HARRIS COMPUTER CORPORATION

By: _____

Name: Jerry Canada, Jr

Title: President, PSS Group

CROSSPOINTE LLC

By: _____

Name: Joan M. Stewart

Title: CEO

Warrantor

_____

Name: Joan M. Stewart

_____

Witness Name:

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SCHEDULE L

(Assumed Contracts)

Customer Contracts:

Customer Name ████████████████████████████████

Title of Contract: ██████████████████████

Parties to the Contract: ████████████████████████████

Date ███████████████

Term ████████████

Customer Name: Brevard Public Schools

Title of Contract: CrossPointe Master License Agreement

Parties to the Contract: CrossPointe, Inc.. and Brevard Public Schools

Date: July 17, 2002

Term: Perpetual License

Customer Name: Brevard Public Schools

Title of Contract: Product Order Form 1002

Parties to the Contract: EDR, LLC and Brevard Public Schools

Date: April 12 2013

Term: 5 years

Customer Name ████████████████████

Title of Contract: ██████████████████████

Parties to the Contract ████████████████████

Date: ████████████████

Term ████████████