



CrossPointe Software Maintenance Agreement

The following Master Terms and Conditions contained in this Agreement (“T&C’s” or “Agreement”) supplement and govern each Product Order Form (“Product Order Form”) or Master License Agreement entered into at any time between CrossPointe.net, LLC (“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 or Master License Agreement:

“Master License Agreement” shall mean the master software license agreement for products owned by CrossPointe, whether such original agreement was between CrossPointe.net, LLC or a third party.

“Product Order Form” shall mean the product order form for products owned by CrossPointe.net, LLC pursuant to a Master License Agreement.

“Agreement” shall mean these T&C’s and each Product Order Form, Software Maintenance Agreement or Master License Agreement referring to these T&C’s and entered into by the Parties.

“Effective Date” shall mean the date software Support begins pursuant to the Schedule.

“CrossPointe Supported Products” or “Products” shall mean the products specified by CrossPointe in a Product Order Form, Master License Agreement or Schedule for as long as those products are eligible for Support by CrossPointe.

“Intellectual Property Rights” shall mean all copyrights, patent rights, confidentiality rights, trade secret rights and trademark rights.

“Major Release” shall mean 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.

“Schedule” shall mean the Product Order Form, Master License Agreement or forms initially attached hereto, and/or subsequently added by consent of the Parties, which identify the elements of the System to be provided, the Support to be performed by CrossPointe or a third party under this Agreement, and the fees to be paid by Client for such Support.

“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.

“Subscription Services” shall mean 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.)

“System” shall mean the Software, Operating System and Third Party Software.

“Third Party” shall mean 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. Maintenance Support Term. This Agreement shall commence on the Effective Date and shall continue for an initial term of one year. At the expiration of said term this Agreement will continue from year to year by Client’s payment of the applicable annual maintenance charge pursuant to the renewal provisions of Section 5 herein. This Agreement may be cancelled by written notice being given by either Party to the other with no less than thirty (30) days notice prior to the expiration of a particular one-year term, or by the non-payment of annual maintenance fees pursuant to Section 5 herein. There shall be no pro-ration of fees for cancellation by Client prior to the expiration of any particular one-year term.

3. Support by CrossPointe. During the term of this Agreement, CrossPointe will provide the Client the following support (“Support”):

a. Repair, replace or provide the Client with a program correction for the CrossPointe-Supported Products.

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 5 p.m. ET (excluding weekends and CrossPointe designated holidays).

c. Provide the Client updates, and enhancements 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 at least 12 months after general availability of the then



current Major Release. (2) CrossPointe will alert Client at least 12 months before the scheduled termination of Support for any Major Release. CrossPointe may immediately terminate Support for all CrossPointe Supported Products if Client does not renew Support for the CrossPointe Supported Products designated on a Product Order Form, Master License Agreement, or Schedule. CrossPointe will have no obligation to provide Support for any Client modifications to the Software unless such Client modifications to the Software have been incorporated by CrossPointe into the CrossPointe Supported Products and 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 Support services are good faith estimates only.

e. To the extent it is included in the Product Order Form, Master License Agreement, or Schedule 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.

4. 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. 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 on hardware owned or leased 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 all accompanying 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 all of the accompanying 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).

k. Client acknowledges and agrees that the System is a confidential and proprietary trade secret of CrossPointe. Client, including Client's agents and employees, shall keep CrossPointe's Intellectual Property Rights in the Software and all related "Confidential Information" in strictest confidence. "Confidential Information" shall mean 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 with respect to programs developed by CrossPointe for 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 Intellectual Property Rights in the Software, Third Party Software, Operating System or any programs developed at Client's request are and shall remain with CrossPointe or the respective third party. No party, other than Client and CrossPointe-approved third-party vendors (provided such Client has permitted access to the Software's source code), shall be permitted to maintain, modify, reverse engineer, assemble or decompile, in whole or in part, the Software, without the express written consent of CrossPointe. 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 others. Client agrees to secure and protect the Intellectual Property Rights with respect to 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 all legal remedies, including, without limitation, rights to terminate this Agreement and the Software, Third Party Software and Operating System licenses granted to Client pursuant to the Master License Agreement.

5. Maintenance Fees, Renewal and Reinstatement. There is no maintenance fee for the CrossPointe Supported Products during the Initial Support Period as defined in the Master License Agreement. Support after the Initial Support Period will be provided pursuant to this Agreement upon payment of an annual maintenance charge as invoiced pursuant to the Schedule or CrossPointe's current annual maintenance fees, as applicable. Client may renew Support for the CrossPointe Supported Products for one-year renewal periods by paying CrossPointe the applicable amounts under this Section 5 and the Schedule. 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 Schedule 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 Schedule. Client will reimburse CrossPointe for reasonable travel and out-of-pocket expenses incurred when rendering on-site Support (CrossPointe will notify Client before incurring those expenses). If Client allows maintenance to expire, Support may be reinstated by the purchase and installation of an upgrade to the current release and the payment of the then current annual maintenance fees.

6. Excusable Delays. If CrossPointe shall be delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, such delay shall be excused during the continuance of and to the extent of such cause and the period for performance shall be extended to such extent as may be necessary to enable CrossPointe to perform after the cause of the delay has been removed.

7. Severability. If any provision, or portion thereof, of this Agreement is invalid under any applicable statute or rule of law, it is to that extent deemed omitted.

8. Binding Upon. This Agreement shall be binding upon and inure to the benefit of only the Parties hereto, and their respective successors and permitted assigns.



9. Waiver. 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.

10. General. Both Parties agree that, except as may be required by applicable law or regulation, they shall not use in advertising, publicity, or otherwise, any information concerning this Agreement or disclose the terms and conditions of this Agreement without the prior written consent of the other party.

11. Jurisdiction and Venue. The sole and exclusive jurisdiction and venue for any litigation between CrossPointe.net and Client shall be in Twelfth Judicial Circuit Court in and for Sarasota County, Florida.

CROSSPOINTE.net, LLC

SARASOTA COUNTY SCHOOLS

(Client Name)

(Authorized Signature)

Joan Keebler

(Printed Name)

Chief Executive Officer

(Title)

(Date)

750 South Orlando Ave

(Street Address Line #1)

Suite 201B

(Street Address Line #2)

Winter Park, Florida 32789

(City, State, Postal Code)

(Authorized Signature)

(Printed Name)

(Title)

(Date)

(Client Street Address Line #1)

(Client Street Address Line #2)

(Client City, State, Postal Code)

(Authorized Signature)

Larry Plasil

(Printed Name)

Chief Technology Officer

(Title)

(Date)

(Authorized Signature)

Reg Maton

(Printed Name)

Chief Information Officer

(Title)

(Date)

Approved for Legal Content
December 2, 2008, by Matthews, Eastmoore,
Hardy, Crauwels & Garcia, Attorneys for
The School Board of Sarasota County, Florida
Signed: ASH