



EXECUTIVE SUMMARY

Pursuant to Broward College Policy 6Hx2-1.14 and Procedure A6Hx2-1.14, Broward College exercised the authority delegated by the Board to authorize the non-standard agreement (purchase order) with Cronus Consulting (Pty) Ltd., to provide technical services and support for all Cronus ESP products. Fiscal Impact: Estimated \$9,822.72.

Presenter(s): Raj Mettai, Chief Information Officer

What is the purpose of this contract and why is it needed?

This is one year agreement for technical support and upgrades for all Cronus software. This includes technical services and support for all Cronus ESP products including: ESPBatch, ESPControl, ESPAPI, ESP Utilities, ESPPlog. These tools were licensed by the Florida Community College Software Consortium (FCCSC) to provide version control for the Integrow software produced by the consortium for the benefit of all member institutions.

The Higher Education Technology Group (HTEG) operates a complex technical environment that requires the utilization of version control software to help manage and successfully release to our member communities the correct and latest version of our code.

When the membership completed platform migration to Open Source operating systems, we found it necessary to secure version control products from Cronus Consulting (Pty) Ltd. since they currently are the only provider of his technology for LINUX/UNIX platforms. Our prior version control software worked only in the mainframe technical environment and thus was made obsolete by the platform migration.

What procurement process or bid waiver was used and why? Small purchase for Category One (\$0.00 - \$10,000) per College Procedure A6Hx2-6.34 was used, where there is no formal or informal competitive requirements for goods and services acquired by the College at this dollar threshold. One quote was obtained by the requesting department to identify the best value for the required commodity or service.

Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?
Yes.

What fund, cost center and line item(s) were used? The fund used is FD202. The cost center used is CC0353, and line item is GLC64500.

Has Broward College used this vendor before for these products or services? Yes.

Was the product or service acceptable in the past? Yes.

Was there a return on investment anticipated when entering this contract? No.

Was that return on investment not met, met, or exceeded and how? Not applicable.

Does this directly or indirectly feed one of the Social Enterprise tactics and how? Not applicable.

Did the vendor amend Broward College's legal terms and conditions [to be answered by the Legal Office] if the College's standard contract was used and was this acceptable to the Legal Office?

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

FISCAL IMPACT:

Description: One year agreement from 5/1/2024 to 4/30/2025. Estimated \$9,822.72 paid from HETGroup operating account FD202, BU202, CC0353, PG000407.

05/01/24

CC0353 · HETG Consortium

(\$9,822.72)

Alina Gonzalez

Alina Gonzalez

4/5/2024

Donald Astrab

Donald Astrab, VP, Academic Operations, Analytics, & Comm


























4/8/2024

APPROVAL PATH: 12039: Cronus Consulting (Pty) Ltd. (Technical Services and Support)

 **Workflow**

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| Stage | Reviewer | Description | Due Date | Status |  |
|-------|-----------------------------|---|-------------------|---|---|
| 1 | Alina Gonzalez | Review & Approve | |  Completed |  |
| 2 | Raj Mettai | CIO Review | |  Completed |  |
| 3 | Donald Astrab | Chief Operating Officer | |  Completed |  |
| 4 | Natalia Triana-Aristizabal | Contracts Coordinator | |  Completed |  |
| 5 | Zaida Riollano | Procurement Approval | |  Completed |  |
| 6 | Christine Sims | Budget Departmental Review | |  Completed |  |
| 7 | Rabia Azhar | CFO Review | |  Completed |  |
| 8 | Legal Services Review Group | Review and Approval for Form and | |  Completed |  |
| 9 | Electronic Signature(s) | Signatures obtained via DocuSig  | |  Completed |  |
| 10 | Natalia Triana-Aristizabal | Contracts Coordinator | |  Completed |  |
| 11 | Board Clerk | <u>Agenda Preparation</u> | |  Completed |  |
| 12 | District Board of Trustees | Meeting | 06/25/24 01:00 PM |  Pending | |



**EXHIBIT "A" TO PURCHASE ORDER
STATEMENT OF WORK**

Description of Goods or Services:

Cronus Consulting (Pty) Ltd. will provide technical support, annual maintenance and upgrades for all Cronus software for the period of 5/1/2024-4/30/2025. This includes technical services and support for all Cronus ESP products including: ESPBatch, ESPControl, ESPAPI, ESP Utilities, ESPPlog.

Total Consideration Payable for the Goods or Services:

\$9,822.72

**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

1. Incorporation by Reference. The District Board of Trustees of Broward College, Florida ("BC") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum–Software ("Addendum") into the agreement between BC and Vendor ("Agreement"). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

2. Payment. Vendor shall submit bills for compensation for goods, services, and/or expenses in detail sufficient for a pre- and post-audit. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from BC will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the BC conditions that are detailed herein. In lieu of all provisions in the Agreement pertaining to penalties for late payment, if BC does not issue payment within approximately thirty days of receipt of a proper invoice, BC shall pay Vendor an interest penalty from the date the invoice was due until it was paid at the rate established pursuant to Section 55.03(1), Florida Statutes, if the interest exceeds one dollar.

3. Taxes. BC is immune and/or exempt from the payment of taxes and shall not be responsible for the payment thereof. BC shall provide an appropriate exemption certificate.

4. Travel Expenses. If BC is reimbursing travel expenses, Section 112.061, Florida Statutes, applies to those reimbursements. In order to be reimbursed, travel expenses must be expressly stated in the Agreement or otherwise approved by an authorized BC official in writing in advance.

5. No Automatic Renewals or Extensions. Provisions resulting in the automatic renewal or extension of the term of the Agreement shall be of no force and effect and are hereby deleted. To renew or extend the term of the Agreement, the parties shall enter into an amendment.

6. Compliance with Laws. Vendor represents, warrants and covenants as of the date of the Agreement and throughout the term of the Agreement that the software complies with all applicable legal requirements, including, but not limited to, the Americans with Disabilities Act and related regulations.

7. Vendor Intellectual Property Indemnification. Vendor shall indemnify, defend, and hold harmless BC and its officers, directors, board of trustees, agents, assigns, and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, for any claim or lawsuit brought alleging infringement of any intellectual property right arising out of the rights granted by Vendor to BC under the Agreement. This section shall not be subject to any limitations of liability provisions in the Agreement. This paragraph shall survive the expiration or early termination of the Agreement.

8. Announcements and Press Statements. No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of BC, permission must be granted by its **Vice President, Communications and Community Relations** or that position's designee, and in the case of the other party, permission must be granted by its _____ or that position's designee.

9. Relationship of the Parties. Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other.

10. Use of BC Information Not Allowed. Pursuant to the Agreement, Vendor may access, maintain, collect, record, organize, structure, store, retrieve, adapt, alter, use, process or otherwise handle information owned or held by BC and may create information from or with such existing information owned or held by BC (collectively, the "BC Data"). Vendor shall not have the right to use BC Data (whatever the medium) except to perform its obligations under the Agreement. Without limitation of the foregoing, Vendor shall not give any third party access to BC Data without BC's written permission except as expressly authorized in the Agreement or this Addendum.

11. BC Rights in Information. BC retains all rights to, title to, and interest in BC Data, and Vendor's use

**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

and possession thereof is solely on BC's behalf. BC may access and copy any BC Data in Vendor's possession at any time, and Vendor shall facilitate such access and copying promptly after BC's request.

12. Termination for Convenience. BC may terminate the Agreement upon thirty (30) days' notice to Vendor, with no further obligation to Vendor other than to pay for any amounts owing prior to the effective date of termination. BC shall not be liable for any early termination charges and shall not be entitled to any refund of prepaid amounts.

13. Annual Appropriation Contingency. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event funding is not approved for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions to the contrary. BC shall notify Vendor in writing after the adoption of the final budget for each subsequent fiscal year if funding is not approved.

14. State of Florida Public Entity Contracting Prohibitions. Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Agreement shall not be, ineligible for the award or continuation of this Agreement under Sections 287.133, 287.134 and 287.135, Florida Statutes. Vendor understands and accepts that this Agreement may be void, voidable or subject to immediate termination by BC if the representation, warranty and covenant set forth above is violated. BC, in the event of such termination, shall not incur any liability to Vendor for any work or materials furnished.

15. BC's Sovereign Immunity. Nothing in the Agreement shall act, or be construed, to increase or alter BC's liability for tort claims beyond the waiver of immunity limits set forth in Section 768.28, Florida Statutes

16. Governing Law and Other Legal Matters. The laws of the State of Florida shall govern all aspects of the Agreement without regard to any conflict-of-law principles. The exclusive venue of any legal actions arising out of the Agreement shall be Broward County, Florida. BC is entitled to the benefits of sovereign immunity, including but not limited to immunity from suit in federal court. Any provisions in the Agreement requiring arbitration and/or mediation of matters arising out of or relating to the Agreement or altering

the time to bring lawsuits or to make claims under the Agreement shall be of no force and effect and are hereby deleted. Any provisions resulting in the Agreement's causing a default under another agreement or otherwise triggering rights and responsibilities under another agreement between the parties shall be of no force and effect and are hereby deleted.

17. Confidentiality Obligations. Vendor shall comply with any and all applicable state and federal laws and BC policies and procedures governing the use and/or safekeeping of BC Data, including but not limited to the Family Educational Rights and Privacy Act, laws governing personally identifiable information, the Florida the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, the Federal Trade Commission's Red Flags Rule, and amendments thereto (collectively, "Privacy Laws"). In the Agreement involves Vendor's access to education records, Vendor is hereby designated a school official and will comply with all legal requirements applicable thereto. If the Agreement involves Vendor's access to, any protected health information, as that term is or may be defined by state or federal law, BC and Vendor shall enter into a separate business-associate agreement that shall govern the use of the protected health information.

In the event Vendor is required by subpoena, law, or other judicial or administrative process to disclose BC Confidential Information, Vendor shall (i) provide BC with prompt notice thereof; (ii) consult with BC on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of BC Confidential Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws; and (v) reasonably cooperate with BC in any attempt that BC may make to obtain an order or other reliable assurance that confidential treatment shall be accorded.

Upon termination of the Agreement or upon request by BC, Vendor shall promptly return all BC Confidential Information. This section shall not be subject to any limitations of liability provisions in the Agreement. Vendor agrees to include all such terms and conditions in this section in any subcontractor or agency contracts providing services on behalf of Vendor, provided this requirement is not intended to authorize any subcontracting or agency unless permitted hereby.

**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

18. Vendor's Confidential Information / Public Records Law. BC is subject to the public records laws of Florida, including records retention requirements, and any provisions in the Agreement pertaining to confidentiality obligations on the part of BC are hereby deleted and shall be of no force and effect. Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon Vendor and Vendor shall bear all costs and fees related to the same.

If Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other Agreement requirements provided by law, Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by BC to perform the service.
- (b) Upon request from the BC, provide the BC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Vendor does not transfer the records to the BC.
- (d) Upon completion of the Agreement, transfer, at no cost, to the BC all public records in possession of Vendor or keep and maintain public records required by the BC to perform the service. If Vendor transfers all public records to the BC upon completion of the Agreement, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Agreement, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BC, upon request from the BC's custodian of public records, in a format that is compatible with the information technology systems of the BC

- (e) IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT BC AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, VENDOR ACKNOWLEDGES THAT BC CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO VENDOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS SECTION. VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON BC OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS AGREEMENT. VENDOR ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH FLORIDA LAW AND THIS AGREEMENT WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND GROUNDS FOR TERMINATION.

19. Miscellaneous. Any terms and/or conditions in the Agreement on the following subject matters are hereby deleted in their entirety and shall be of no force and effect: (i) grants of exclusivity by BC to Vendor; (ii) restrictions on the hiring of Vendor's employees; and (iii) attorneys' or collection-fees provisions.

By signing below, Vendor's authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.

VENDOR: Click or tap here to enter text.

By: 
Name: Hentie Pauley
Title: Director
Date: 2 April 2024



SOFTWARE LICENSE AGREEMENT

MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

CRONUS CONSULTING (Pty) Ltd.

Reg: 2006/019641/07

(hereinafter referred to as "CRONUS")

and

Broward Community College / FCCSC

(hereinafter referred to as "The Client")



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SOFTWARE LICENSE AGREEMENT

MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN

CROSS CONSULTING (Pty) Ltd.

Reg: 2006/019641/07

(hereinafter referred to as "CROSS")

and

Broward Community College / FCCSC

(hereinafter referred to as "The Client")

WHEREAS

(a) CRONUS has the right to license the use of the software products, together with any additional facilities, referred to in **schedule A** (the "Products")

and

(b) CRONUS has agreed to grant and the Client has agreed to accept a non-exclusive, non-transferable license to use the Products at the installation address specified in **schedule A** for the purposes contemplated by, and in all respects the terms and conditions of this License.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

2 License Fee

- 2.1 The Client shall on each anniversary of the signature of this License pay to CRONUS the Annual Maintenance Fee specified in Schedule A.
- 2.2 All License Fees and other charges payable hereunder are exclusive of South African VAT and all other taxes and duties which shall be paid (where applicable) by the Client at the appropriate prevailing rate or rates.

3 Scope of License/Client's Undertakings

- 3.1 The Client may copy the Products into any machine-readable or printed form for back up purposes only (limited to one copy of each Product). Documentation may not be copied, in whole or in part without the prior consent of CRONUS.
- 3.2 The Client hereby agrees and undertakes:
 - 3.2.1 not to sell, rent, lease, or otherwise dispose of the Products or the Documentation; and
 - 3.2.2 to ensure that the Products and Documentation and any copies of either do not leave the Client's possession or control whether by loan, theft or otherwise; and
 - 3.2.3 not (except as permitted by Clause 3.1) to reproduce, copy, translate, adapt, modify, vary or duplicate any Product or part thereof nor communicate the same to any third party without CRONUS's prior written consent; and
 - 3.2.4 to maintain accurate and up-to-date records of the number and location of all copies of the Products
- 3.3 Any breach of the provisions of this Clause (including without limitation any use of the Products or any copies thereof in connection with more than the designated number of CPU's and or number of end-users specified in Schedule A) shall entitle CRONUS to terminate this license forthwith.

4 Warranty and Liability

- 4.1 Save as expressly provided in this License, CRONUS shall not be liable to the Client for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this License, the Products, the Documentation, their use or otherwise.
- 4.2 Without prejudice to any other provision of this License, CRONUS expressly excludes all liability for consequential loss or damage which may arise in respect of the Products, their use or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings even if advised of the possibility of the same occurring.
- 4.3 CRONUS warrants that so far as it is aware the Products do not infringe any patent, copyright or other intellectual right of any third party but makes no further warranty or representation in that

1 Grant and Scope of License

- 1.1 CRONUS hereby grants to the Client and the Client hereby accepts, on the terms and conditions of this License, a non-exclusive license to use the Products, any additional facilities and any materials and documentation supplied for their operation or use (the "Documentation") only on the designated number of CPUs and/or number of application environments located at the Installation Address specified in Schedule A and solely for the Client's own internal applications listed in Schedule A.**
- 1.2 The License hereby granted to the Client is personal to the Client and is not transferable in whole or in part without the prior written consent of CRONUS.**
- 1.3 The License hereby granted shall continue from year to year subject to payment of Annual Maintenance Fees and to termination as herein provided.**

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respect. In the event that infringement is alleged, CRONUS will indemnify and hold Client harmless from any and all costs related to such allegation and shall undertake the defense of such allegation at CRONUS' sole expense with which Client shall cooperate.

CRONUS shall attempt to obtain rights so that Client may continue to use the Products, but in the event that is not feasible within a commercially reasonable period of time, CRONUS will provide substitute products.

- 4.4 CRONUS warrants that the Product delivered to the Client will operate in substantial conformance with the Documentation for such release.
- 4.5 This Limited warranty is in lieu of all other warranties, express or implied, including but not limited to warranties of merchantability and fitness for a particular purpose, and is the only warranty made by CRONUS in connection with the Product.
- 4.6 CRONUS's sole obligation and the Client's sole remedy in the event of breach of warranty shall be for CRONUS to use reasonable efforts to correct any defects in the Product or as set forth above in 4.3.

5 Intellectual Property Rights

- 5.1 The Client acknowledges that any and all copyright, patent, trade mark and other intellectual property rights whatsoever in the Products and Documentation and all copies of each are and shall remain the property of CRONUS and its Licensor absolutely and that accordingly the Client shall not become the owner of the Products and Documentation or any copies of either but may use the same in accordance with this License.
- 5.2 The Client shall not whether during the term of this License or after its termination in any way question or dispute the ownership by CRONUS or its Licensor of any such rights.
- 5.3 Any new inventions, designs or processes which evolve in the performance of, or as a result of this License shall belong absolutely to CRONUS or its Licensor and the Client shall on CRONUS's request and at CRONUS's or its Licensor's expense do such things and execute such documents as may be necessary to vest all and any rights in such inventions, designs or processes in CRONUS or its Licensor.

6 Product Support and Maintenance

Upon payment of the License Fee and for the period specified in Schedule A from the date of delivery CRONUS undertakes to provide support and maintenance service for the Products on the terms of this License. After the end of this initial maintenance period Annual Maintenance Fees shall thereafter be payable to CRONUS at the rates in force from time to time. The rates in force at the date of this License are set out in Schedule A. The maintenance period shall be automatically renewed for a period of twelve months on each anniversary of the date of this License unless it is terminated by either party giving written notice of termination at least 60 days prior to the date of renewal. In no event will the annual maintenance fee established by CRONUS for any year be increased over the annual Maintenance fee established for the preceding year by more, in percentage, than the lesser of either five percent (5%) or the percent of increase in the United States Bureau of Labor Statistics Consumer Price Index, Urban Workers-All Items (1967 = 100) annual average for the second preceding annual term compared to the annual average for the first preceding term.

7 Scope of Product Support and Maintenance

For the period specified in Schedule A from the date of delivery and for so long thereafter as Annual Maintenance Fees due are fully paid CRONUS shall provide the following services in respect of the Products:

- 7.1 Code Corrections - supply code corrections as required to correct Product malfunctions in accordance with Product specifications as set out in the Documentation. However, if the Client has modified any Products, CRONUS shall be under no obligation to correct any Product malfunction;



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CRONUS shall attempt to obtain rights to the Client's new software to use the Product, but in the event that it is not possible within a commercially reasonable period of time, CRONUS will not be responsible for the Client's software.

CRONUS warrants that the Product delivered to the Client will operate in substantial accordance with the Documentation for each release.

The Client warrants that it is the owner of the Product and that it is not providing the Product to any third party.

CRONUS's sole obligation and the Client's sole remedy in the event of a defect in the Product shall be the repair or replacement of the Product, and CRONUS shall not be liable for consequential or special damages.

CRONUS shall not be responsible for any data loss or corruption of the Client's data, and the Client shall be responsible for backing up its data.

The Client acknowledges that any and all copies of the Product, including any source code, shall remain the property of CRONUS and the Client shall not be permitted to copy, modify, or distribute the Product without the prior written consent of CRONUS.

The Client shall not be responsible for any data loss or corruption of the Client's data, and the Client shall be responsible for backing up its data.

Any new invention, design, or process which evolves in the Client's course of use of the Product shall be the property of the Client, and CRONUS shall not be responsible for such inventions.

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- 7.2 Product Updates - supply, so long as to do so is technically or commercially feasible as reasonably determined by CRONUS, updates for the Products and Documentation;
- 7.3 Advice - supply a reasonable amount of consultation in the event of difficulties in the use of the Products or in the interpretation of the results of the Products via written and telephone advice. If on-site assistance is necessary within a period of 90 days from the date of this License as a result of the failure of the Products to perform to the specifications contained in the Documentation, no charge will be made other than for travel and accommodation expenses. If the problem is due to other causes, or if assistance is necessary after such period, CRONUS's standard consulting rates for such services will be applicable.

8 **Termination**

This License may be terminated in whole or in part by CRONUS if:

- 8.1 any undisputed payment of License Fees or Annual Maintenance Fees is overdue by more than 30 days: or
- 8.2 the Client commits a material breach of the terms hereof and (if the breach is remediable) does not remedy the breach within 30 days of a written request to do so.
- 8.3 On termination the Client shall forthwith return to CRONUS all Products and Documentation (including any copies thereof which it has made) at the Client's expense.
- 8.4 Termination shall not affect any rights of either party which occurred before termination.
- 8.5 The client may terminate this license by giving written notice of termination at least 60 days prior to the date of renewal

9 **General**

- 9.1 No variation: No variation to the terms and conditions of this License shall be valid unless reduced to writing and signed by the Client and CRONUS.
- 9.2 Clause Headings: The clause headings in this License are for convenience only and shall not be construed as forming part of this License.
- 9.3 Notices: Any notice or consent to be given under this License shall be in writing and shall be delivered personally or sent by post or facsimile to the other party at the address shown as Domicilium citandi et executandi in Schedule A, or such other address as it notifies from time to time.
- 9.4 Force Majeure: Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires, strikes, insurrection or riots, embargo, container shortages, breaks or delays in transportation, inability to obtain supplies of raw materials, or requirements or regulations of any competent authority. If either party shall be prevented from carrying out its obligations hereunder due to any such occurrence for more than 60 days then the party not in default shall be entitled to terminate this License and neither party shall by reason only of such termination have liability to the other.
- 9.5 Governing Law: This License (and the Schedule A) constitutes the entire License between the parties in relation to the Products and the Documentation and their use by the Client and shall be governed by and construed in accordance with the Law of the State of Florida.
- 9.6 Validity: If any provision or portion of this License is invalid or unenforceable under any applicable statute or rule of law, it is deemed to be omitted.
- 9.7 Source Code:
 - 9.7.1 Escrow Option: CRONUS desires to avoid disclosure of its proprietary technology except under certain limited circumstances and agrees to establish an escrow account to

provide for the retention, administration and controlled access of the proprietary technology materials of CRONUS. The Client will be required to subscribe to this service and accept to pay the standard fees and expenses applicable to the services provided by the elected "Escrow provider"

9.7.2 or the Client agrees that should the source code be made available onsite the Client shall not at any time whatsoever, as permitted by law, whether during or after termination of this or Maintenance Agreement(s) – The Client:

9.7.2.1 use any information from the product source code of Cronus Consulting or its affairs acquired by "The Client" performing pursuant to this Agreement other than so as to perform in terms of this Agreement; nor

9.7.2.2 disclose to any person or entity any secret or "Confidential Information" of Cronus Consulting or other information not known to competitors of Cronus Consulting and which could provide a competitive advantage to any such competitor; In each instance; (The term "Confidential Information" shall mean any information of a confidential or proprietary nature that has been disclosed or is disclosed by Cronus Consulting to "The Client", or which is developed by Cronus Consulting during the installation or customization of the Cronus Consulting software, including but not limited to all know-how, specifications, technical, commercial, scientific and financial information, pricing, trade secrets, intellectual property, plans, business processes and procedures, strategies, any other processes, systems, machinery, designs, drawings, client lists and client particulars pertaining to the business of Cronus Consulting whether on computer data media or in any other form whatsoever);

9.7.2.3 hereby acknowledges that the copyrights and any other intellectual property rights remains with Cronus Consulting and that the right to fully exploit, assign, alter, modify, adapt and/or otherwise deal with such work are limited to be specifically and expressly consented to in writing by Cronus Consulting to the license agreement thereof.

10 **Patent or Copyright Infringement - Indemnity.** CRONUS shall hold harmless and defend BCC against any and all suits based on any claim that the use by BCC of the deliverables provided under this Agreement by CRONUS infringes on any United States patent right or copyright, provided CRONUS is promptly notified in writing of any such suit or claim against BCC, and further provided that BCC permits CRONUS to defend, compromise or settle the same, and gives CRONUS all available information, reasonable assistance, and authority to enable CRONUS to do so. This indemnity shall not apply to any infringement arising out of: (i) the alteration or modification of the deliverables by BCC; (ii) any use of the deliverables which is not authorized herein; or (iii) use of the deliverables with any computer hardware or software not supplied or approved by CRONUS. This provision sets forth CRONUS's sole obligation and liability and BCC's exclusive remedy for any proprietary rights infringement by the deliverables.

13:02 PM 05/11/2005

Thus done and Signed at _____ on this ___ day of _____ 200_

Willis Holcombe

for: Broward Community College/FCCSC

Pauley

for: Cronus Consulting (Pty)Ltd.

Willis Holcombe

Print Name and Designation

PRESIDENT

Hentie Pauley - Director
Print Name and Designation

AS WITNESSES

1. *Joyce Warden*

2. _____

1. _____

2. _____

APPROVED AS TO FORM AND LEGALITY:

[Signature]
KEVIN FERNANDER
COLLEGE ATTORNEY

Vertical stamp: F&P MA 03 MAR 2003

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PRESIDENT'S OFFICE

The date of signing is _____ day of _____ 2007

[Signature]

for Citrus Consulting (PFL) to

[Signature]

for Broward Community College (BCC)

Handle Parley - Director
Print Name and Designation

Print Name and Designation

Signature

WITNESSES

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AND EQUAL
KEVIN FERRANDER
COLLEGE ATTORNEY