



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER:
 ISCG0074

PAGE:
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
 KRISTA FERRELL
 304-558-2596

RFQ COPY
 TYPE NAME / ADDRESS HERE

VENDOR

From: Origin ID: (925)404-1800
 Jeff Champagne
 FrontRange Solutions
 4120 Dublin Blvd., Suite 200
 Dublin, CA 94568

SHIP TO

DEPARTMENT OF ADMINISTRATION
 IS&C - CHIEF FINANCIAL OFFICER
 1 DAVIS SQUARE
 CHARLESTON, WV
 25301 304-558-5472

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
01/10/2007				
BID OPENING DATE: 01/18/2007		BID OPENING TIME 01:30PM		

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		099-00-01-001		
HEAT & IHEAT SOFTWARE/MAINTENANCE REQUEST FOR QUOTATION THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRGINIA OFFICE OF TECHNOLOGY, IS SOLICITING BIDS FOR AN OPEN END CONTRACT TO PROVIDE THE AGENCY WITH HEAT AND IHEAT SOFTWARE AND ASSOCIATED ANNUAL MAINTENANCE PER THE ATTACHED SPECIFICATIONS. EXHIBIT 3 LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON UPON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE. UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT. RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30)						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Emmanuelle Lee</i>	TELEPHONE	DATE <i>January 17, 2007</i>
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES</p>						

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<p>FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p> <p>EXHIBIT 4</p> <p>LOCAL GOVERNMENT BODIES: UNLESS THE VENDOR INDICATES IN THE BID HIS REFUSAL TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO COUNTY, SCHOOL, MUNICIPAL AND OTHER LOCAL GOVERNMENT BODIES, THE BID SHALL EXTEND TO POLITICAL SUBDIVISIONS OF THE STATE OF WEST VIRGINIA. IF THE VENDOR DOES NOT WISH TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO ALL POLITICAL SUBDIVISIONS OF THE STATE, THE VENDOR MUST CLEARLY INDICATE SUCH REFUSAL IN HIS BID. SUCH REFUSAL SHALL NOT PREJUDICE THE AWARD OF THIS CONTRACT IN ANY MANNER.</p> <p>REV. 3/88</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</p>						

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<p>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN</p>						

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<p>THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID; OR () BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX & REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p>						

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UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASIN DIVISION IN WRITING IMMEDIATELY.						
BIDDER: -----						
DATE: -----						
SIGNED: -----						
TITLE: -----						
* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)						
NOTICE A SIGNED BID MUST BE SUBMITTED TO: DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130						

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<p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: KF-21</p> <p>RFQ. NO.: ISCG0074</p> <p>BID OPENING DATE: 01/18/2007</p> <p>BID OPENING TIME: 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p style="text-align: center;">----- 719-799-1066 -----</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p> <p style="text-align: center;">----- JEFF CHAMPAGNE -----</p> <p style="text-align: center;">PHONE: 719-532-7565</p>						

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Overview:

The Office of Technology is seeking a single vendor for HEAT and iHeat software and associated annual maintenance. It is the intent to establish an open end contract with the successful vendor.

Current Environment

The Office of Technology has purchased the following number of licenses previously.

- 30- HEAT
- 10 -iHEAT

Specifications

The product must include:

1 year maintenance and support must be included in the price. Maintenance will be invoiced and paid quarterly in arrears. Support available 8 am – 8 pm Monday thru Friday.

The product must be v8.4 for both HEAT and iHEAT licenses.

Cost Sheet

Our initial purchase will be approximately 35-75 licenses of HEAT v8.4 and approximately 45-65 licenses of iHEAT v8.4. WV reserves the right to buy whatever quantities (from 0 to 300) it deems necessary. The State of WV also reserves the right to reject all or part(s) of this bid.

UNIT PRICE:

\$ 1,272.50 per HEAT v8.4 license

UNIT PRICE:

\$ 236 per iHEAT v8.4 license

ONE YEAR MAINTENANCE PRICE
TO BE PAID QUARTERLY IN ARREARS

\$ 285.25 PER HEAT license

ONE YEAR MAINTENANCE PRICE
TO BE PAID QUARTERLY IN ARREARS

\$ 851.63 iHEAT license

SEE ATTACHED SCHEDULE FOR FURTHER PRICING. 15 LICENSES, THEREAFTER PER THE ATTACHED SCHEDULE.

FOR AN INITIAL PURCHASE OF AT LEAST 15 LICENSES, @ 17.5900 OF LIST PRICING FOR EACH PURCHASE

Pricing will be valid for one year from date of initial award provided the initial award is made on or before 2/18/07. Otherwise pricing will expire 02/18/2007

After an initial purchase of 15 licenses (bringing the total HEAT licenses to 45) per the bid response, a 25% discount off of the following list price will apply according to the total license count after each purchase is completed.

Total Licenses after a given purchase	List price per license	Discounted price per license
46	\$1,624	\$1,218.00
47	\$1,618	\$1,213.50
48	\$1,612	\$1,209.00
49	\$1,606	\$1,204.50
50	\$1,601	\$1,200.75
51	\$1,463	\$1,097.25
52	\$1,431	\$1,073.25
53	\$1,402	\$1,051.50
54	\$1,377	\$1,032.75
55	\$1,355	\$1,016.25
56	\$1,336	\$1,002.00
57	\$1,319	\$989.25
58	\$1,303	\$977.25
59	\$1,277	\$957.75
51	\$1,589	\$1,191.75
52	\$1,578	\$1,183.50
53	\$1,567	\$1,175.25
54	\$1,557	\$1,167.75
55	\$1,547	\$1,160.25
56	\$1,537	\$1,152.75
57	\$1,528	\$1,146.00
58	\$1,519	\$1,139.25
59	\$1,510	\$1,132.50
60	\$1,502	\$1,126.50
61	\$1,494	\$1,120.50
62	\$1,486	\$1,114.50
63	\$1,478	\$1,108.50
64	\$1,471	\$1,103.25
65	\$1,463	\$1,097.25
66	\$1,457	\$1,092.75
67	\$1,450	\$1,087.50
68	\$1,443	\$1,082.25
69	\$1,437	\$1,077.75
70	\$1,431	\$1,073.25
71	\$1,425	\$1,068.75
72	\$1,419	\$1,064.25

73	\$1,413	\$1,059.75
74	\$1,408	\$1,056.00
75	\$1,402	\$1,051.50
76	\$1,397	\$1,047.75
77	\$1,392	\$1,044.00
78	\$1,387	\$1,040.25
79	\$1,382	\$1,036.50
80	\$1,377	\$1,032.75
81	\$1,373	\$1,029.75
82	\$1,368	\$1,026.00
83	\$1,364	\$1,023.00
84	\$1,360	\$1,020.00
85	\$1,355	\$1,016.25
86	\$1,351	\$1,013.25
87	\$1,347	\$1,010.25
88	\$1,344	\$1,008.00
89	\$1,340	\$1,005.00
90	\$1,336	\$1,002.00
91	\$1,332	\$999.00
92	\$1,329	\$996.75
93	\$1,325	\$993.75
94	\$1,322	\$991.50
95	\$1,319	\$989.25
96	\$1,315	\$986.25
97	\$1,312	\$984.00
98	\$1,309	\$981.75
99	\$1,306	\$979.50
100	\$1,303	\$977.25
101	\$1,297	\$972.75
102	\$1,292	\$969.00
103	\$1,287	\$965.25
104	\$1,282	\$961.50
105+	\$1,277	\$957.75

AFFIDAVIT

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION:

The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING:


Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY:

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: FRANTRANGE SOLUTIONS INC

Authorized Signature:  Date: 12/19/06

AGREEMENT ADDENDUM

010

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. ~~Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted.~~ In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property. (EW)
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:
STATE OF WEST VIRGINIA

Spending Unit: _____

Signed: _____

Title: _____

Date: _____

VENDOR

Company Name: Front Range Solutions USA Inc.

Signed: Emmanuelle Lee

EMMANUELLE LEE

Title: Associate Counsel

Date: January 17, 2007

FrontRange Solutions USA Inc.'s Response to State of West Virginia Department of Administration Request for Quotation

FrontRange Solutions USA Inc. ("FrontRange Solutions" or "Vendor") would agree to the terms and conditions of the State of West Virginia Department of Administration's (the "State") Request for Quotation due on January 18, 2007 (the "RFQ") **as modified by the Vendor's standard commercial agreements for software licensing and maintenance and support listed in the attached addenda.** Appropriate modifications, if necessary, would be determined jointly by FrontRange Solutions and the State through a written negotiation process.

In addition, FrontRange Solutions objects to the following terms of the RFQ:

- A. The second paragraph of page 2 of the RFQ.
- B. Line item 6 of the General Terms and Conditions of the RFQ.
- C. Line item 10 of the General Terms and Conditions of the RFQ.
- D. The second sentence of line item 13 of the Agreement Addendum of the RFQ.

Consequently, Vendor's response is made expressly subject to the exclusion of the above-referenced items from the final contract.

The pricing quoted will be valid for one year from date of initial award provided the initial award is made on or before 2/18/2007. Otherwise, the pricing quoted will expire 02/18/2007

Do not hesitate to contact the undersigned should you have any questions or comments with regard to this response.

By: Emmanuelle Lee
Emmanuelle Lee, Esq.
Associate Counsel
emma.lee@frontrange.com
(925) 404-1396

Date: January 17, 2007

Encl.

**ADDENDUM TO STATE OF WEST VIRGINIA DEPARTMENT OF ADMINISTRATION'S
PROPOSED CONTRACT
FOR FRONTRANGE SOLUTIONS USA INC.**

The State of West Virginia Department of Administration's Proposed Contract for FrontRange Solutions USA Inc. is modified as set forth below:

1. **VENDOR'S END USER LICENSE AGREEMENT**

Vendor's software shall be provided subject to Vendor's form of End User License Agreement attached as **Schedule A** to this Addendum ("VENDOR'S EULA") which is hereby incorporated by this reference.

2. **VENDOR'S END USER MAINTENANCE AND SUPPORT AGREEMENT**

Vendor shall provide maintenance and support services to the State for the software pursuant to the End User Maintenance and Support Agreement attached as **Schedule B** to this Addendum ("VENDOR'S END USER MAINTENANCE AND SUPPORT AGREEMENT") which is hereby incorporated by this reference.

SCHEDULE A

(Rev. Oct. 2005v2doc)

FRONTRANGE SOLUTIONS END-USER LICENSE AGREEMENT ("EULA")

IMPORTANT – READ CAREFULLY

THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU ("YOU" OR "LICENSEE") AND FRONTRANGE SOLUTIONS USA INC., A COLORADO CORPORATION ("FRONTRANGE SOLUTIONS"), FOR FRONTRANGE SOLUTIONS SOFTWARE PRODUCT, WHICH INCLUDES COMPUTER SOFTWARE AND ASSOCIATED MEDIA AND DOCUMENTATION (COLLECTIVELY "LICENSED SOFTWARE"). BY OPENING THE SOFTWARE PACKAGING, COMPLETING THE ACTIVATION PROCESS, OR DOWNLOADING, INSTALLING, ACCESSING OR UTILIZING THE LICENSED SOFTWARE OR CLICKING THE "I ACCEPT" BUTTON, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE WITH THE TERMS OF THIS EULA, PROMPTLY RETURN THE UNUSED LICENSED SOFTWARE TO THE PLACE FROM WHICH YOU OBTAINED IT FOR A REFUND.

- Protection/Ownership. The Licensed Software may include software owned by third-parties (collectively "Third-Party Owners"). The Third-Party Owners are third-party beneficiaries of this EULA and You agree to be bound to them under all the terms and conditions of this EULA, unless and to the extent that a separate license agreement for such software governs. The Licensed Software is protected by copyright and other intellectual property laws. FrontRange Solutions or a Third Party Owner retain ownership of the Licensed Software and the copies of the Licensed Software provided herewith. The Licensed Software is licensed to Licensee for use subject to the terms set forth in this EULA. You agree that this is a license only and that no title passes to You. You agree not to challenge FrontRange Solutions' rights in or otherwise attempt to assert any rights in the Licensed Software, except those provided under this EULA.
- Grant and Scope of License. Subject to the terms and conditions of this EULA, FrontRange Solutions hereby grants to Licensee, and Licensee fully accepts upon delivery, a nonexclusive, nontransferable and perpetual (unless earlier terminated as provided below) right to use only the executable version (not source code) of the Licensed Software for its own internal business purposes. Your right to use the Licensed Software is limited to only the licensing limits (such as users, assets, modules, technology foundation, databases and other features and benefits) that You have ordered and paid for in accordance with the applicable purchase order or other order documentation. You may use the Licensed Software only as expressly permitted under this EULA and in accordance with the accompanying Documentation and any other written instructions provided by FrontRange Solutions. Certain Licensed Software modules may require that You have a valid license for a specific version (such as the last corresponding version) of a corresponding FrontRange Solutions module, technology foundation product or other application, or product of a third party, and may terminate upon termination of such other product license.
- Restrictions. You agree not to copy the Licensed Software, unless and except as expressly permitted in the accompanying Documentation. If You make such permitted copies of the Licensed Software, the original copy of the Licensed Software and all copies that You make may not leave your control, and title to all copies remain with FrontRange Solutions and/or a Third Party Owner. You agree not to modify, decompile, translate, disassemble or reverse engineer the Licensed Software or otherwise attempt to discover any source code or underlying confidential or proprietary information. You agree not to distribute, rent or lease any portion of the Licensed Software (including any feature enabled by the Licensed Software). You agree not to use any portion of the Licensed Software (including any feature enabled by the Licensed Software) in a commercial hosting, application service provider environment, service bureau or

managed service or otherwise commercially exploit the Licensed Software. You may not create any derivative works to the Licensed Software except to facilitate Your permitted use of the Licensed Software, provided that Your use of such limited derivative works is subject to the same restrictions as described in this EULA (including the restrictions on distribution, rental, hosting or other commercial exploitation of such limited derivative works). You acknowledge that the Licensed Software contains information deemed confidential or otherwise proprietary to FrontRange Solutions or a Third Party Owner, and You agree to handle the Licensed Software with at least the same degree of care employed with respect to Your own confidential or proprietary information.

[The following additional restrictions apply to the Non-Production version of the Licensed Software:

THIS PARTICULAR VERSION OF THE LICENSED SOFTWARE IS FOR NON-PRODUCTION USE ONLY. YOU MAY NOT USE THE LICENSED SOFTWARE IN A PRODUCTION OR LIVE ENVIRONMENT.]

4. License Limits. As mentioned above, Your use of the Licensed Software is limited to certain features and benefits based upon the specific license limits that You have ordered and paid for. License limits on the Licensed Software may include one or more of the following: technology foundation; named user; concurrent user; server; database and/or asset. The definition and applicability of any of these license limits are defined by the order and pricing document, the Documentation and other written agreement between You and FrontRange Solutions related to the specific version of the Licensed Software at the time You license the Licensed Software. For any additional or future acquisitions of the Licensed Software or any other FrontRange Solutions product, FrontRange Solutions may at any time change the definition or applicability of these license limits or any other features, benefits, products or pricing at any time without notice.

Should You exceed any of Your license limits, then You agree to pay the then applicable full list price for the excess usage in accordance with FrontRange Solutions pricing program, as well as the full Maintenance and Support Fee related to these additional products. Different modules of the Licensed Software may install separately within the Licensed Software package, however, all the software enabled and/or installed are subject to the terms and conditions of this EULA.

5. Installation and Verification. The installation and verification of the Licensed Software may entail completion of a serialization and/or license file deployment procedure in which You will be required to enter serialization code(s) and/or install license file(s) ("Activation Keys") provided to You as a part of the Licensed Software. You agree not to share the Activation Keys provided to You to any third party other than an authorized FrontRange Solutions reseller ("Reseller") with which You have engaged. The Activation Keys indicate to the loaded Licensed Software the software features and/or modules enabled with licensed configuration limits as applicable, including (i) number of authorized concurrent users, named users and/or assets covered by the license; (ii) server restrictions; (iii) database restrictions; and (iv) technology foundation restrictions. You may be required to electronically register the Licensed Software to one application server machine or other physical device by connecting to FrontRange Solutions' activation or registration servers (or website). Further, the Activation Keys system may disable Your use of the Licensed Software in the event You attempt to exceed or otherwise violate the terms of this EULA.
6. Privacy. The installation process may require you to register the Licensed Software with user information and the Licensed Software may contain an automated audit tool whereby FrontRange Solutions will receive notification of Your licensed limits and user information. Any personal information collected (1) will be used solely for registration and license limit auditing purposes for the Licensed Software and to provide You with important information about the Licensed Software, (2) will be stored in computer servers with limited access that are located in controlled facilities and/or under SSL protocol, (3) may be stored and processed in the United States or any

other country in which FrontRange or its affiliates, subsidiaries or agents maintain facilities and by using this Licensed Software, you consent to any such transfer of information outside of your country, (4) may be stored indefinitely, (5) will not be shared with any government agency, private organization, or the public, except with Licensee's name as a reference company in the context of sales presentations and marketing activities.

7. Ongoing Audit. Certain Licensed Software require that FrontRange Solutions periodically audit Your use of the Licensed Software to verify Your compliance with Your license limits, and in most instances, such audits will be performed remotely through electronic access to the Licensed Software. You agree to permit FrontRange Solutions (or its agent) to electronically monitor and/or audit Your use of the Licensed Software for the sole purpose of verifying Your compliance with the terms of Your license.
8. Updates. If the Licensed Software is an Update (defined as an upgrade, modified version, updates, addition, and copies of the Licensed Software, if any, made generally available by FrontRange Solutions as an "Update" to the Licensed Software to those customers with a valid and current maintenance agreement with FrontRange Solutions) to a previous version of the Licensed Software, you must possess a valid license to such previous version in order to use such Update. All Updates are provided to You on a license exchange basis. You agree that by using an Update You voluntarily terminate Your right to use any previous version of the Licensed Software; provided, however, that you may continue to use previous versions of the Licensed Software solely to assist You in the transition to the Update.
9. Transfer. To the maximum extent permitted by applicable law, Licensee may not resell or otherwise transfer for value the Licensed Software. Notwithstanding the foregoing, Licensee may assign all of its licensed rights and duties under this EULA to a third-party that: (a) directly or indirectly controls Licensee; (b) is controlled by or under common control with Licensee; or (c) purchases all or substantially all of Licensee's assets; provided, however, that (i) Licensee gives written notice to FrontRange Solutions of the transfer or assignment; (ii) the permitted third-party assignee agrees to be bound by all the terms herein and completes and returns a registration card or other requested transfer documentation to FrontRange Solutions; and (iii) in no circumstance shall any transfer or assignment, unless specifically agreed upon in writing, (y) release Licensee from any prior outstanding obligation under this EULA, or (z) allow Licensee or Licensee's transferee or assignee, collectively, to utilize more software features, users and/or modules than authorized under this EULA and Your order documentation. If You transfer the Licensed Software, You must simultaneously transfer possession of all associated media and documentation, and remove all Licensed Software from Your computers.
10. Links to Other Software. Use of the Licensed Software may provide links, integrations or "publishing" access to separate third-party software. FrontRange Solutions provides such links, integrations or "publishing" access as a benefit only and such access does not change the license rights of the separate third-party software. You must determine if Your use of the separate third-party software as accessed through the Licensed Software is in compliance with the respective third-party software end-user license agreement.
11. Links to Third-Party Sites. You may link to third-party sites through the use of the Licensed Software. FrontRange Solutions is providing such links to you as a convenience only. FrontRange Solutions does not generate or control the content of the third-party sites and is not responsible for and does not endorse the policies, practices or contents of any third-party sites.
12. Warranty/Remedy/Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY AND REMEDY SET FORTH BELOW ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. Except as provided for in this EULA, no FrontRange Solutions reseller, partner, dealer, agent or employee is authorized to modify or add to the following warranties and remedies.

FrontRange Solutions warrants that for a period of ninety (90) days following delivery of the Licensed Software (i) the media on which the Licensed Software is furnished shall be free from defects in materials and workmanship under normal use; and (ii) the Licensed Software will perform substantially in accordance with FrontRange Solutions' user documentation accompanying the Licensed Software. FRONTRANGE SOLUTIONS DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL DEFECTS WILL BE CORRECTED. THIS LIMITED WARRANTY IS VOID IF FAILURE OF THE LICENSED SOFTWARE HAS RESULTED FROM ACCIDENT, ABUSE, MODIFICATION, OR MISAPPLICATION OF THE LICENSED SOFTWARE.

If You believe there is a defect in the Licensed Software such that it does not meet the Limited Warranty provided above, You must notify FrontRange Solutions in writing within the 90-day warranty period. FrontRange Solutions' entire liability and Your exclusive remedy with regard to the Limited Warranty, shall be, at FrontRange Solutions' sole discretion, either repair or replacement of the Licensed Software or a refund of the amount paid to FrontRange for the Licensed Software (provided in that case that You also return the Licensed Software). Any repaired or replacement Licensed Software shall be warranted for the remainder of the original warranty period.

To the maximum extent permitted by applicable law, except as provided above, FRONTRANGE SOLUTIONS MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED WITH RESPECT TO THE LICENSED SOFTWARE, ITS QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

UNLESS BOTH EXPRESSLY REPRESENTED AND AGREED IN WRITING, THE LICENSED SOFTWARE IS NOT DESIGNED, OR INTENDED FOR USE IN ANY MEDICAL, LIFE SAVING OR LIFE SUSTAINING SYSTEMS, TRANSPORTATION SYSTEMS, NUCLEAR SYSTEMS, OR FOR ANY OTHER MISSION CRITICAL APPLICATION IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD CREATE A SITUATION WHERE SUBSTANTIAL PROPERTY DAMAGE OR PERSONAL INJURY OR DEATH MAY OCCUR. FRONTRANGE SOLUTIONS AND ANY THIRD-PARTY OWNERS RECOMMEND AGAINST, AND DISCLAIM ANY LIABILITY FOR, USE OF THE LICENSED SOFTWARE IN ANY SUCH APPLICATION.

You understand and acknowledge that FrontRange Solutions will not be liable for network-related problems attributable to the operation of the Licensed Software and that network configuration changes may affect the system's performance.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR LIABILITY ARISING UNDER THE INDEMNIFICATION PROVIDED BELOW, FRONTRANGE SOLUTIONS' ENTIRE LIABILITY UNDER THIS EULA SHALL BE LIMITED TO THE AMOUNT PAID BY YOU TO FRONTRANGE FOR THE LICENSED SOFTWARE.

IN NO EVENT WILL FRONTRANGE SOLUTIONS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, even if advised of the possibility of such damages. In particular, and without limitation, FrontRange Solutions shall have no liability for any data stored or processed with the Licensed Software, including the costs of recovering such data.

13. Indemnification. FrontRange Solutions will defend, indemnify and hold Licensee harmless from any third party claim that the Licensed Software infringes any copyright, trademark or trade secret owned or controlled by the third party; provided, however, that (i) FrontRange Solutions shall be notified promptly in writing by Licensee of any such claim; (ii) FrontRange Solutions shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (iii) Licensee shall cooperate with FrontRange Solutions, at FrontRange Solutions'

expense, in a reasonable way to facilitate the settlement or defense of such claim; (iv) such claim does not arise from Licensee's modifications not authorized by FrontRange Solutions; and (v) should the Licensed Software become, or in FrontRange Solutions' opinion likely to become, subject to such claim of infringement, then Licensee shall permit FrontRange Solutions, at FrontRange Solutions' option and expense, either (a) to procure for Licensee the right to continue using the Licensed Software, or (b) to replace or modify the Licensed Software so that it becomes noninfringing and performs in a substantially similar manner to the original product, or (c) upon failure of (a) or (b), despite the reasonable efforts of FrontRange Solutions, to terminate this EULA and return the license fee paid by Licensee for the Licensed Software pro-rated over a four (4) year life span. THE FOREGOING INDEMNIFICATION IS LICENSEE'S SOLE AND EXCLUSIVE REMEDY AND FRONTRANGE SOLUTIONS' SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

14. Maintenance and Support. FrontRange Solutions provides maintenance and/or technical support (including upgrades and enhancements) for the Licensed Software only through separate agreements. Please contact FrontRange Solutions or the place from which You obtained the Licensed Software if You wish to obtain maintenance and/or technical support through the execution of such an agreement.
15. Compliance; Export Control; Privacy. You must comply with all applicable laws and regulations in Your use of the Licensed Software. You may not export, ship, transmit, or re-export the Licensed Software in violation of any applicable law or regulation, including, without limitation, the Export Administration Regulations issued by the United States Department of Commerce, or any such similar law or regulation issued by such other governmental entity which may have jurisdiction over such export. Further, You agree to abide by all applicable data protection, SPAM, privacy, communication and similar rules, directives and other laws in Your use of the Licensed Software.
16. United States Government Restricted Rights. THIS SECTION APPLIES ONLY TO LICENSING OR USE BY THE FEDERAL GOVERNMENT OF THE UNITED STATES. The Licensed Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the federal government is subject to restricted rights as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at 252.227-7014 for DOD contracts and at FAR (48 CFR 52.227-19) for civilian agency contracts or other comparable agency clauses.
17. Termination. Your right to use the Licensed Software continues until this EULA is terminated. You may terminate this EULA at any time by destroying all of Your copies of the Licensed Software. This EULA will automatically terminate if You fail to comply with the material terms of this EULA. Your right to use the Licensed Software may also be limited by another agreement to which You are subject, and such other agreement may cause an earlier termination of the rights granted under this EULA (for example, in the case the Licensed Software is provided under a separate agreement on a time limited or evaluation basis). Upon any termination, You agree to remove all Licensed Software from Your computers, destroy all copies of the Licensed Software, and, upon request from FrontRange Solutions, certify in writing Your compliance herewith.
18. Severability. If any of the terms, or portions thereof, of this EULA are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the contract to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.
19. Whole Agreement. This EULA and any applicable FrontRange Solutions order form or maintenance and support agreement or like document constitutes the entire agreement between You and FrontRange Solutions relating to the license rights for the Licensed Software, and any additions to, or modifications of, this EULA shall be binding upon the parties only if the same shall be in writing and duly executed by You and by a duly authorized officer of FrontRange Solutions. THE TERMS AND CONDITIONS OF ANY CORRESPONDING PURCHASE ORDER OR

OTHER ORDER CONFIRMATION FORM RELATING TO THE LICENSED SOFTWARE ARE ONLY BINDING ON FRONTRANGE SOLUTIONS IF SUCH TERMS AND CONDITIONS ARE AGREED TO IN WRITING IN ACCORDANCE WITH THE PRIOR SENTENCE AND IN A DOCUMENT OTHER THAN THE PURCHASE ORDER OR OTHER ORDER CONFIRMATION FORM.

20. Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this EULA shall not be deemed a waiver of any further or future right under this EULA.
21. Assignability. This EULA shall inure to the benefit of, and is freely assignable to, FrontRange Solutions' successors and assignees of rights in the Licensed Software.
22. Resellers. If Licensee acquired the Licensed Software through a Reseller, Licensee acknowledges that (i) payment and delivery terms for the Licensed Software must be established separately and independently between the Licensee and the Reseller; (ii) this EULA constitutes the entire agreement between the Licensee and FrontRange Solutions regarding the license rights for the Licensed Software as described above and is controlling; (iii) the terms and conditions of any purchase order or any other agreement between the Licensee and the Reseller are not binding on FrontRange Solutions; (iv) the Reseller is not FrontRange Solutions' agent and is not authorized to alter, amend or modify the terms of this EULA or to otherwise grant any license or other rights relating in any way to the Licensed Software; and (v) Licensee's nonpayment of any amount due to a Reseller or any other relevant third party relating to its licensed rights under this EULA shall constitute a basis for FrontRange Solutions' termination of this EULA. Licensee further acknowledges that FrontRange Solutions makes no representation or warranty with regard to any services provided by any Reseller, or any actions or failures to act by any Reseller.

If Reseller received the Licensed Software as Not-For-Resale (or 'NFR') software in connection with a FrontRange Solutions reseller or other channel program, then this Licensed Software may only be used by Reseller, Reseller's right to use the Licensed Software shall be subject to the terms of such program and applicable reseller agreement, and will terminate upon Reseller's termination from such program or such earlier time as set forth in applicable reseller agreement.

23. Contact. All questions concerning this EULA shall be directed to:

FrontRange Solutions USA Inc.
4120 Dublin Blvd., Suite 200
Dublin, CA 94568
Attention: General Counsel
Phone: 925.404.1800
Facsimile: 719.799.1042
Email: legal@frontrange.com

24. Payments; Additional Licenses. Except where the Licensed Software is acquired through a Reseller (described above), the licenses granted herein are subject to and Licensee agrees to make payments to FrontRange no later than thirty (30) days from invoice, unless otherwise agreed to in writing by FrontRange. If You wish to expand the number of the seats, users, modules, technology foundation and/or any other FrontRange Solutions product, You may be able to license such items from FrontRange Solutions or a Reseller. You agree that the license of such additional items shall be under the same terms and conditions as contained in this EULA. You agree that the parties do not have to execute (whether electronically, by paper or other written form) another copy of this EULA or any other license agreement, or that the electronic signature process may be bypassed, with respect to any additional items licensed from FrontRange Solutions.

SCHEDULE B

FRONTRANGE SOLUTIONS PROFESSIONAL SERVICES TERMS & CONDITIONS

The following Terms and Conditions ("Agreement") apply to all professional services Statements of Work between FrontRange Solutions USA Inc. ("FrontRange") and the following party ("Client") [*please print client name*]: _____.

1. Scope of Services. FrontRange shall provide the professional services (the "Services") described in a statement of work ("SOW"), which may be amended from time to time only by written mutual agreement of the parties. The terms and conditions of this Agreement shall govern any SOWs between the parties. In the event of any conflict between this Agreement and any SOW, the terms and conditions of this Agreement shall govern. FrontRange shall have no obligation to commence performance of any Services until the parties have executed an SOW documenting the Services. FrontRange makes no promise of cost or completion dates. Any estimate provided is merely that – an estimate – and nothing in any SOW or other document is intended to imply a fixed price quote.

2. Client's Duties and Responsibilities. Client shall provide FrontRange with all data, files, and other information relevant to the Services to be performed hereunder, and shall c provide FrontRange with all assistance as may reasonably be required to properly perform the Services.

3. Relationship of Parties. Each party is an independent contractor and as such has no authority to bind or commit the other party. Nothing in this Agreement will be construed to create a joint venture, partnership or any similar arrangement between the parties.

4. Fees and Payments. Client shall pay time and materials charges, plus reasonable expenses, in accordance with FrontRange's established rates and minimums in effect at the time the Services are rendered, or such other rates or amounts as may be specified in an SOW executed by both parties. Client is responsible for any and all federal, state, dominion, provincial or local sales, use, personal property, excise, or other taxes, fees or duties arising from or related to this Agreement (other than taxes based on FrontRange's net income). All payments for fees, taxes and expenses must be made within thirty (30) days of invoice. In the event invoices are not timely paid, FrontRange may suspend and/or terminate services, in addition to such other remedies it may have at law or in equity. In any proceeding to collect amounts due, FrontRange is entitled to the costs of collection (including reasonable attorneys' fees and expenses).

5. Title; Improvements. FrontRange retains all right, title and interest, including copyright and patent rights, in and to any know-how, ideas, inventions, concepts, drawings, models, designs, formulas, methods, information, works of authorship, computer software, documents and tangible items created for Client by FrontRange in connection with FrontRange's provision of services to Client (the "Developments"). Subject to Client's payment in full for the Services, FrontRange grants Client a limited, non-exclusive, non-transferable license to use the Developments for Client's internal business purpose on terms similar to the license agreement governing Client's use of the FrontRange software separately licensed by Client.

6. Termination. Any SOW may be terminated by either party if the other party (i) fails to pay any amount due under this Agreement within thirty (30) days after written notice of such nonpayment; (ii) commits a material breach of this Agreement or SOW, which breach, if capable of being cured, is not cured within thirty (30) days of a written notice of termination; (iii) terminates or suspends its business, becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or

becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes which are not rescinded within forty-five (45) days. Termination of an SOW shall not affect Client's obligation to pay for services rendered prior to termination.

7. Warranty. FrontRange warrants to Client that FrontRange shall provide Services in a professional and workmanlike manner. EXCEPT AS EXPRESSLY STATED IN THE PRIOR SENTENCE, FRONTRANGE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED WITH RESPECT TO THE SERVICES, THEIR QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY OF THE PARTIES SHALL BE LIMITED TO THE MONEY PAID BY CLIENT UNDER THE APPLICABLE SOW. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. No action, regardless of form, relating to or arising out of any Services may be brought by either party more than one (1) year after the date of completion of such Services.

9. Miscellaneous Provisions. Client shall not transfer or assign this Agreement and any such attempted assignment or transfer shall be void and without effect. This Agreement is governed by the laws of the State of Colorado without regard to conflicts of law provisions, with venue in El Paso County, Colorado. A party's waiver of or delay in asserting a breach of this Agreement or any right hereunder shall not constitute a waiver of such right. If any provision of this Agreement is held to be unenforceable, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement constitutes the entire agreement between the parties hereto related to the any Services, and any and all written or oral agreements are expressly cancelled. Any modifications of this Agreement or any SOW must be in writing and signed by both parties. Additional, inconsistent or conflicting terms in any purchase order are void unless such terms are expressly agreed to in writing by FrontRange in a document other than the purchase order.

SCHEDULE B

FRONTRANGE SOLUTIONS End-User Maintenance and Support Agreement

This End-User Maintenance and Support Agreement ("Agreement") is between FrontRange Solutions USA Inc., on behalf of itself and its subsidiaries, divisions and affiliates ("FrontRange"), and the FrontRange customer identified and signing below ("Customer" or "You"), and governs the terms and conditions to which all maintenance and support services will be provided to Customer.

1. **Basic Conditions.** In order for You to receive and continue to receive "Maintenance" (as defined below) or "Support" (as defined below) for any FrontRange software product ("Licensed Software"), You must have a license under a current End-User License Agreement ("EULA") corresponding to each Licensed Software. This Agreement will automatically terminate as to each Licensed Software upon termination of the EULA corresponding to said Licensed Software. Further, You must maintain a valid Maintenance and Support agreement for all Your FrontRange current and new products; FrontRange reserves the right to terminate this (or any other support or services) Agreement should You fail to maintain Maintenance and Support for all Your FrontRange products.

2. **Maintenance.** Maintenance entitles You to receive version protection updates, upgrades, bug fixes and new releases or versions of the Licensed Software, including updated documentation, at such time as FrontRange makes such updates, upgrades and new releases or versions available generally to its customers, as FrontRange may provide in its sole discretion without requirement of a separate license agreement, and without additional charge other than payment of the Maintenance and Support fees described herein. Maintenance does not include version protection updates, upgrades, bug fixes and new releases or versions of any third-party software or related documentation included in the Licensed Software; such version protection updates, upgrades, bug fixes or new releases or versions, if available, will be provided and/or billed separately. Maintenance does not include or pertain to any FrontRange products that are not part of the Licensed Software. Version protection updates, upgrades, bug fixes and new releases or new versions of the Licensed Software provided through Maintenance, whether from FrontRange or a third-party other than FrontRange, shall be subject to the same terms and conditions of the applicable EULA.

3. **Support.**

(a) Support entitles You to telephone assistance at FrontRange's published number, and/or assistance via E-mail or other automated processes, with the Licensed Software as outlined in our current support guideline. Support is currently available Monday through Friday. (Please go to the "Support" section of www.frontrange.com to request copies of our support guidelines and to determine Your local support hours.) The hours and days of support are subject to change at any time; provided that (i) FrontRange will provide advance notice of any change in the hours and days; and (ii) the total number of hours shall not be less than 40 in any regular work week (excluding holidays). FrontRange will also provide after-hours support, via pager, for downed systems where the Licensed Software is inaccessible or inoperable to all authorized users. Additional after-hours support will be charged at FrontRange's then current rates and costs. FrontRange strives to respond to telephone inquiries within 4 business hours and all other inquiries within 2 business days.

(b) Support will be provided only for those questions and issues forwarded to FrontRange from Customer's internal help desk support staff; support will not be provided for each individual licensed user. FrontRange will attempt to answer Your specific questions; however Support is offered to You on a good faith, diligent effort basis only, and FrontRange may not be able to resolve every request for Support. Support is provided for ongoing use of the Licensed Software; it is not intended to be a substitute for professional services or training necessary for the implementation or installation or system redesign of the Licensed Software. All other services, including without limitation, on-site assistance, custom programming, database and network administration, and custom designed reports and forms, may be furnished by FrontRange or Your authorized FrontRange Partner subject to staff availability, and at FrontRange's or the Partner's then current rates and costs. Support does not include or pertain to any FrontRange products that are not part of the unmodified Licensed Software.

(c) Support is available for each of the Licensed Software for 18 months following the first public release of said Licensed Software, or, in the case of software products developed by FrontRange, for versions of the Licensed Software which are not older than one release prior to the latest available Licensed Software version, whichever is longer, and provided in any case that Customer and FrontRange are parties to a current Maintenance and Support agreement.

(d) Support entitles You to assistance (as described above) with certified database products, ODBC connections and BDE native drive connections, if any, only as to issues that deal directly with the interface between the certified database software and the Licensed Software, or the set-up of the connections to the Licensed Software. Support does not include database software, ODBC or BDE specific errors.

(e) Except as otherwise provided, Support does not include any of the following:

- (i) supporting database products, including without limitation, set-up and configuration of database products;
- (ii) supporting the Licensed Software as it pertains to Customer's use of 'Beta' level or non-certified versions of database products;
- (iii) resolving network, workstation or environmental errors not directly related to the Licensed Software;
- (iv) supporting any Licensed Software on computers, workstations or servers using 'Beta' level or non certified versions of operating systems;
- (v) supporting any Licensed Software customizations;
- (vi) supporting the set-up of stored procedures or triggers and replication of SQL databases; and
- (vii) supporting any Licensed Software being used in a manner for which it was not designed.

(f) It is Your responsibility to make and maintain adequate back-ups. In no event will FrontRange be responsible for lost data.

4. Fees.

(a) General. Maintenance and Support fees must be prepaid at the beginning of each annual term, based upon FrontRange's then current renewal rates and costs. If You renew Your Maintenance and Support with FrontRange in subsequent years by paying the applicable fee upon being invoiced, You agree to be subject to the same terms and conditions as contained in this Agreement or as otherwise agreed to in writing at the time of renewal. Orders for additional products or licensed users will increase Your Maintenance and Support fees under this Agreement. Customer agrees that in the event of FrontRange does not receive payment for Maintenance and Support, the Licensed Software or other products or services provided by FrontRange to Customer on a timely basis, FrontRange may immediately terminate or suspend this Agreement.

(b) Lapse; Reinstatement. If Your Maintenance and Support terminates as a result of expiration or otherwise pursuant to the terms and conditions of this Agreement, a reinstatement fee will be charged to You if You decide to purchase another Maintenance and Support term. Such reinstatement fee is 110% of the total amount of the applicable Maintenance and Support fees for the lapsed period.

(c) Taxes. Customer is responsible for all applicable taxes, value added taxes or other taxes (however designated) related to the licensing of the Licensed Software, excluding franchise taxes and taxes based on FrontRange's income. If necessary, You shall provide FrontRange with written evidence of Your exemption from otherwise applicable taxes.

(d) Unless otherwise instructed by FrontRange, You agree to directly pay FrontRange for renewals of Maintenance and Support.

5. Term/Termination.

(a) Maintenance and Support services are offered on an annual basis, and will expire at the end of the annual term if not actively renewed. - You must affirmatively renew Maintenance and Support through payment of the applicable renewal fee. Failure to renew will result in termination of Maintenance and Support, and will subject You to the reinstatement fee described under "Fees" should You decide to reinstate.

(b) As mentioned above, this Agreement will automatically terminate upon any termination of Your corresponding EULA. In addition, You may terminate this Agreement at any time for convenience; provided that in such event, Customer will not be entitled to a refund of any Fees paid under this Agreement.

(c) If FrontRange breaches this Agreement, and such breach is not cured within one month after FrontRange receives written notice from You of such breach, You may terminate this Agreement for breach and You shall be entitled to receive a refund of the prepaid and unused portion of the Maintenance and Support fees paid to FrontRange. The foregoing refund shall be Customer's exclusive remedy, and FrontRange's sole liability, for FrontRange's breach of this Agreement.

6. Warranty and Liability Disclaimer. FrontRange warrants that the Maintenance and Support services provided to Customer under this Agreement shall be performed with due care, and in a professional and workmanlike manner. FrontRange does not otherwise warrant the accuracy or completeness of any services provided pursuant to this Agreement. FRONTRANGE DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE IN CONNECTION WITH THE SUBJECT OF THIS AGREEMENT. IN NO EVENT, UNDER ANY THEORY OF LAW, INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, NEGLIGENCE, OR OTHER

TORT, SHALL EITHER PARTY AND/OR ITS AFFILIATES BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF A PARTY AND/OR ITS AFFILIATES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FRONTRANGE'S LIABILITY UNDER THIS AGREEMENT EXCEED THE PREPAID AND UNUSED PORTION OF YOUR MAINTENANCE AND SUPPORT FEES PAID TO FRONTRANGE. FRONTRANGE SPECIFICALLY DISCLAIMS ALL RESPONSIBILITY FOR ANY SERVICES PROVIDED BY ANY PARTNER OR ANY OTHER THIRD PARTY.

7. **Severability.** If any of the provisions, or portions thereof, of the Agreement are invalid or unenforceable under any applicable statute or rule of law, the court shall reform the contract to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.

8. **Whole Agreement.** This Agreement constitutes the entire agreement between You and FrontRange related to the subject matter hereof, and all additions, amendments or modifications of this Agreement shall be binding upon the parties only if the same shall be in writing and duly executed by You and a duly authorized officer of FrontRange. (The Licensed Software is licensed under a separate EULA and professional services, if any, are provided under a separate professional services agreement.) THE TERMS AND CONDITIONS OF ANY CORRESPONDING PURCHASE ORDER RELATING TO THE LICENSED SOFTWARE OR MAINTENANCE AND SUPPORT ARE ONLY BINDING ON FRONTRANGE IF THEY ARE AGREED TO IN WRITING BY AN AUTHORIZED FRONTRANGE OFFICER AND IN A DOCUMENT OTHER THAN THE PURCHASE ORDER. Further, if You purchased this service through a Partner, You acknowledge that this Agreement constitutes the entire agreement between You and FrontRange regarding the Maintenance and Support services described herein and that this document is controlling, that the terms and conditions of any purchase order or any other agreement between You and Partner are not binding on FrontRange, and that Partner is not FrontRange's agent and is not authorized to alter, amend or modify the terms of this Agreement or to otherwise grant any license or other rights relating in any way to the Licensed Software.

9. **Miscellaneous.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement. In the event You assign Your corresponding EULA to a third-party in accordance with the provisions thereof, You may assign this Agreement to the same third-party provided that You provide written notice of such assignment to FrontRange. FrontRange may freely assign this Agreement to a purchaser of that portion of FrontRange's business to which this Agreement relates, to the surviving corporation in the event of a merger, and to any affiliate or third-party whom FrontRange authorizes to provide Maintenance and Support for the Licensed Software of the nature contemplated hereby. Customer agrees that any purchase of Maintenance and Support for additional products, shall be subject to the same terms and conditions as contained in this Agreement, unless otherwise agreed to in writing at the time of such future purchase.

BY SIGNING THIS AGREEMENT, THE CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

CUSTOMER INFORMATION	
Customer Name	
Shipping:	
Address:	
City, State, Zip:	
Billing:	
Address:	
City, State, Zip:	
Contact name:	
Title:	
Telephone:	
Facsimile:	
Email:	

Initial Term Start Date:	
Initial Term End Date:	

CUSTOMER SIGNATURE	
Signature:	
Name:	
Title:	
Date:	