

**STATE OF MISSISSIPPI
DEPARTMENT OF FINANCE AND ADMINISTRATION'S
BUREAU OF BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT
501 North West Street, Suite 1401B, Woolfolk Building
Jackson, Mississippi 39201
Phone: 601-359-3621**

**REQUEST FOR PROPOSAL
FOR
ACQUISITION OF A WEB-BASED
METER DATA MANAGEMENT SYSTEM**

RFP No: 3631

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **July 06, 2010 @ 3:00:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management.

Acquisition of a Web-based Meter Data Management System

The Vendor must submit proposals and direct inquiries to:

Charles R. Snowden, Director Mississippi Department of Finance and Administration's Bureau of Building, Grounds and Real Property Management 501 North West Street, Suite 1401-B, Woolfolk Building Jackson, Mississippi 39201-1495 (601) 359-3621 SnowdeR@dfa.state.ms.us
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To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in a package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO RFP NO. 3631 due July 06, 2010 @ 3:00 p.m., ATTENTION: Charles R. Snowden, Director

RFP 3631 Response Checklist

RFP Response Checklist: These items should be included in your response to RFP 3631.

- _____ 1) One clearly marked original response and five (5) identical copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- _____ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- _____ 3) *Proposal Bond*, if applicable (Section I)
- _____ 4) *Proposal Exception Summary*, if applicable (Section V)
- _____ 5) Vendor response to *RFP Questionnaire* (Section VI)
- _____ 6) Point-by-point response to *Technical Specifications* (Section VII)
- _____ 7) Vendor response to *Cost Information Submission* (Section VIII)
- _____ 8) *References* (Section IX)

COST PROPOSAL - Vendor's *Cost Information Submission Form* (Section VIII) must be submitted as a separate sealed proposal that is clearly marked:

“Cost Proposal in Response to RFP 3631 – Do Not Open.”

Include items 1 and 2 listed below inside the cost proposal binders.

Originals and said 5 copies should be provided in separate three-ring loose-leaf binders.

The front and spine of the three-ring loose-leaf binder should be labeled with the Vendor name and RFP number.

- _____ 1) One (1) clearly marked original cost proposal
- _____ 2) Five (5) identical copies of the cost proposal

If a Vendor encloses the separately sealed cost proposals in a larger package for mailing, the Vendor must clearly mark the outermost package: “Contains Separately Sealed Technical and Cost Proposals for RFP 3631.” Vendor must also clearly mark the separately sealed cost proposals inside the larger package: “Cost Proposals for RFP 3631 for:” Vendor Name.

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SECTION I
SUBMISSION COVER SHEET AND CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Finance and Administration's Bureau of Building, Grounds and Real Property Management, sometimes referred to as **DFA** should contact for questions and/or clarifications.

Name _____ Phone # _____
Address _____ Fax # _____
_____ E-mail _____

Subject to acceptance by **DFA**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit "A", except those listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing "this" *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented herein is an authorized dealer in good standing of the products/services included in this proposal.

Original signature of Officer in Bind of Company/Date

Name (typed or printed) _____
Title _____
Company name _____
Physical address _____
State of Incorporation _____

CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

PROPOSAL BONDS

A Proposal Bond is not required in response to RFP No. 3631.

SECTION II PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP).

General Provisions

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the Department of Finance and Administration's Bureau of Building, Grounds and Real Property Management by the date and time specified. **DFA** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the original Proposal Bond, (if explicitly required in Sections I and IV). with a copy of the Proposal Bond in the 5 copies, if required.
6. **DFA** reserves the right to reject any and all proposals, including those with exceptions, prior to and at any time during negotiations.
7. **DFA** reserves the right to waive any defect or irregularity in any proposal procedure.

8. **Vendor Submittal Requirements**

The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **DFA** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and five (5) identical copies of the complete proposal, including all sections and exhibits, in three-ring binders.
- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
- 8.3 Number each page of the proposal.
- 8.4 Respond to the sections and exhibits in the same order as this RFP.
- 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
- 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
- 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with “NOT APPLICABLE.”
- 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 8.9 When an outline point/attachment is a statement provided for the Vendor’s information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
- 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
- 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.

9. **Cost Submittal**

It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor’s cost proposal may be grounds for non-responsiveness of the Vendor’s proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The

Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **Clarifications**

DFA reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **DFA** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.

11. **Unsolicited Clarifications**

Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **DFA**.

12. **Unsolicited Clarifications – Conditions For Consideration**

Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:

- 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
- 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
- 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
- 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
- 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
- 12.6 The Vendor must submit one clearly marked original and five (5) copies of the clarification.
- 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).

13. **Communications with the State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing, regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be

submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the DFA website.

<http://www.dfa.state.ms.us/Offices/BOB/BOBRFQ.htm>

Vendors failing to comply with this requirement will be subject to disqualification.

- 13.1 The State's contact person for the selection process is: Charles R. Snowden, Director, 501 North West Street, Suite 1401-B, Woolfolk Building, Jackson, Mississippi, 39201, 601-359-3621. SnowdeR@dfa.state.ms.us.
- 13.2 Vendor may consult with State representative as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representative during scheduled oral presentations and demonstrations excluding site visits.

SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the awarded Vendor. Additionally, the terms State of Mississippi, State, Department of Finance and Administration, DFA, Bureau of Building, Grounds and Real Property Management, or “BoB” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications.

2. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of a DFA RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the DFA website, together with the associated RFP specification. Vendors are required to check the website periodically for RFP amendments before the proposal opening date at <http://www.dfa.state.ms.us/Offices/BOB/BOBRFQ> and/or at www.stimulus.mississippi.org

Any and all amendments will be posted no later than noon, seven calendar days prior to the proposal opening date listed on the cover page of this RFP. Should you be unable to access the DFA website, you may contact the DFA contact listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from DFA may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of, all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including, but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a Contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

DFA reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

DFA reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting Contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the Notice of Intent to Award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the Contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

13. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 That, a direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That, the individual is proficient in spoken and written English;
- 13.4 That, the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a Contract that includes any personnel who are not U. S. citizens.
- 13.5 That, the personnel assigned to a project will remain a part of the project throughout the duration of the Contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State, or without the written approval of the Bureau of Building, Grounds and Real Property Management for extenuating circumstances. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the Contract.

14. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property, and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that

remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. **Restriction on Advertising**

Vendors must receive written approval from the State before advertising or referencing the award of the Contract or the services being provided. Vendors must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from existing Information Technology Services (ITS) contracts or other state contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. **Additional Information to be Included**

In addition to answering each specification within this RFP, Vendors must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid Contract has been executed. Any work done by the successful Vendor prior to the execution of the Contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a Contract.

SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a Contract Agreement with **DFA** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit “A”, except those listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

DFA will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all Contracts between **DFA** and the Vendor:

3.1 The Proposal Exception Summary Form as accepted by **DFA**;

3.2 Contracts which have been signed by the Vendor and **DFA**;

3.3 **DFA**'s Request for Proposal, including all addenda;

3.4 Official written correspondence from **DFA** to the Vendor;

3.5 Official written correspondence from the Vendor to **DFA** when clarifying the Vendor's proposal; and

3.6 The Vendor's proposal response to the **DFA** RFP.

4. **Order of Precedence**

When a conflict arises regarding Contract intent due to conflicting statements in documents included in the Contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **DFA** and the awarded Vendor.

5. **Additional Contract Provisions**

The Contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. **Mandatory Legal Provisions**

- 6.1 An Insurance Certificate for General Liability and Workers Compensation is required.
- 6.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 6.3 The Vendor shall have no limitation on liability for claims related to the following items:
- 6.3.1 Infringement issues;
 - 6.3.2 Bodily injury;
 - 6.3.3 Death;
 - 6.3.4 Physical damage to tangible personal and/or real property; and/or
 - 6.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 6.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 6.5 Any Contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 6.6 Any Contract negotiated under this RFP is subject to availability of funds of the acquiring State entity and are contingent upon receipt by the awarded Vendor of a Contract from the acquiring State entity. Notice requirements to Vendor cannot exceed sixty (60) days.
- 6.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this Contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 6.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any

unpaid, undisputed balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that the State is exempt from the payment of taxes. This does not relieve the Vendor from taxes on purchases made by the vendor (even on behalf of the State) under this Contract.

- 6.9 The State shall not pay any attorney's fees, prejudgment interest, or the cost of legal action to or for the Vendor.

7. **Approved Contract**

- 7.1 Award of Contract - A Contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:

- 7.1.1 Written notification made to proposers on **DFA** letterhead, or
- 7.1.2 Notification posted to the **DFA** website for the project.
- 7.1.3 Proper execution of completed Contracts (signed by both parties, etc.).

- 7.2 Protests - Refer to section IV.37 herein.

8. **Contract Validity**

All Contracts are valid only if signed by the appropriate authority in accordance with DFA Policies and Procedures.

9. **Order of Contract Execution**

Vendors will be required to sign Contracts and to initial all Contract changes before the State signs.

10. **Availability of Funds**

All Contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the awarded Vendor of a Contract from the acquiring State entity.

11. **Requirement for Electronic Payment and Invoicing**

- 11.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") will be made electronically, via deposit to the bank account of the Vendor's choice. The awarded Vendor must enroll and be activated in PayMode, the State's current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>.

Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.state.ms.us.

11.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project Contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

11.3 Items 11.1 and 11.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

12. **Time For Negotiations**

12.1 All contractual issues must be successfully negotiated within eighteen (18) calendar days from the Vendor's Notice of Intent to Award the project Contract from **DFA**, unless **DFA** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor's response to this RFP. **DFA** may withdraw the Notice of Intent to Award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

12.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All Contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) calendar days prior to scheduled negotiations, unless **DFA** consents to a different period.

13. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the Contract with the State.

14. **Sole Point of Contact**

DFA will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the Contract.

14.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, Contracts, and resolution of issues and/or disputes, the Vendor represents all contractors, third parties, and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are

binding on all such parties and the State is only required to negotiate with the Vendor.

- 14.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 14.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this Contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document, must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject Contract. No assignment of payment will be considered at the time of award unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.
15. **DFA Approval of Subcontractor Required**
Unless provided in the Contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **DFA** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the Contract.
16. **Inclusion of Subcontract Agreements**
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
17. **Negotiations with Subcontractor**
In order to protect the State's interest, **DFA** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the Contract.
18. **References to Vendor to Include Subcontractor**
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

19. Outstanding Vendor Obligations

- 19.1 Any Vendor who presently owes the State of Mississippi money pursuant to any Contract and who has received written notification regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, the State has an active Petition before the appropriate Bankruptcy Court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
- 19.2 Any Vendor who is presently in default on existing Contracts or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
- 19.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
- 19.4 Some reiterated reasons for rejection, but not limited to, are:
- 19.4.1 Failure to comply with the bid requirements.
 - 19.4.2 Bidder is in arrears on existing Contracts with the Bureau or another state agency.
 - 19.4.3 Bidder has defaulted on a previous Contract.

20. Equipment Condition

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **DFA** specifications, unless an explicit requirement for used equipment is otherwise specified.

21. Delivery Intervals

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of award.

22. Pricing Guarantee

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

23. Shipping Charges

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

24. Amortization Schedule

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the Contract.

25. Americans with Disabilities Act Compliance for Web Development and Portal Related Services

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

26. Ownership of Developed Software

26.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

26.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

27. Ownership of Custom Tailored Software

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

28. Terms of Software License

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

29. The State is Licensee of Record

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

30. **Remote Access via Virtual Private Network**

Vendor must understand that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Vendor and the State agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Vendor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the State's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of Contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Vendor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

31. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

32. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **DFA** Public Records Procedure established in accordance with the Mississippi Public Records Act. The Public Records Procedure can be found on the DFA website at:

<http://www.dfa.state.ms.us/Content/publicinfopolicy.pdf>

As outlined in the Third Party Information section of the **DFA** Public Records Procedure, **DFA** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **DFA** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal. In addition, **DFA** will not provide third-party notice for requests for any Contract executed as a result of this RFP, with the exception of information contained in Contract exhibits identified and labeled as confidential during the contract negotiation process. **DFA** will provide third-party notice of requests for any such confidential exhibits to allow the Vendor the opportunity to protect the information by Court Order as outlined in the **DFA** Public Records Procedure.

Summary information and Contract terms, as defined above, become the property of **DFA**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and Contract information are sometimes received by **DFA** significantly after the proposal opening date. **DFA** will notify the signatory "Officer in Bind of Company" provided in Section I

of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the “Officer in Bind of Company” should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

33. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the Contract Agreement.

34. **Proposal Bond**

The Vendor is not required to include a Proposal Bond with the RFP No. 3631 proposal.

35. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is required to include the price of a performance bond or irrevocable bank letter of credit with his RFP proposal. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor’s expense prior to the execution of the Contract and may be invoiced to Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management after Contract initiation only if itemized in the *Cost Information Submission* and in the executed Contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon Contract award and is at the State’s sole discretion.**

For the Performance Bond /Irrevocable Bank Letter of Credit as required, the Vendor must procure and submit to the Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management, with the executed Contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the Contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management. No Contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor’s proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or

partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

36. Responsibility for Behavior of Vendor Employees/Subcontractors

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

37. Protests

Protests regarding this RFP are governed by the Mississippi Procurement Manual, Section 6. The manual may be viewed at <http://www.dfa.state.ms.us/Purchasing/ProcurementManual.html>

The letter of protest should identify the Project, include what is being protested, why it is being protested, and be signed by the individual who is protesting.

Protestors may be required to appear at the next Public Procurement Review Board meeting and personally present their protest.

All protests must be made in writing to the DFA contact provided in Section II. 13.1:

Charles R. Snowden, Director
501 North West Street
Suite 1401B Woolfolk Building
Jackson, Mississippi 39201

with copy to:
Chief Procurement Officer
501 North West Street
Suite 701 Woolfolk Building
Jackson, Mississippi 39201

37.1 RFP Protest: Pursuant to Section 6.101.02 and 6.101.03 of the Mississippi Procurement Manual referenced above, Vendors must protest within seven (7) calendar days after they know or should have known of the facts giving rise to the protest. Protests involving the RFP and any of its contents, should be made within seven (7) days

of the advertisement of the RFP. When all *Proposals* have been read, recorded and results posted, a Proposing Firm may choose to protest the award.

37.2 Notice of Intent to Award Protest: When all Proposals have been read, recorded, and results posted, a Proposing Firm may choose to protest the award. No protests will be considered later than seven (7) calendar days following the posting of the Notice of Intent to Award.

38. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Vendor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
 - 1.1 The specification is not a matter of State law;
 - 1.2 The proposal still meets the intent of the RFP;
 - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
 - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **DFA** has no obligation to accept any exception. During the proposal evaluation and/or Contract negotiation process, the Vendor and **DFA** will discuss each exception and take one of the following actions:
 - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
 - 2.2 **DFA** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
 - 2.3 **DFA** and the Vendor will agree on compromise language dealing with the exception and will insert same into the Contract; or
 - 2.4 None of the above actions is possible, and **DFA** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **DFA** and the Vendor reach a successful agreement, **DFA** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **DFA**, will become a part of any Contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.

5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable Contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.

6. For Vendors who have successfully negotiated a Contract with **DFA** in the past, **DFA** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **DFA** or participated in Contract negotiations with **DFA** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

PROPOSAL EXCEPTION SUMMARY FORM

List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.

DFA RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	DFA Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained by going to the **DFA** website, <http://www.its.ms.gov>, clicking on the “Procurement” button to the left of the screen, selecting “Vendor Information”, scrolling to the bottom of the page, and clicking on the link “Forms Required in RFP Responses.” Vendors who have previously done business with the State should furnish **DFA** with their SAAS Vendor code.

SAAS Vendor Code: _____ OR Signed W-9 Form Attached: _____

1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf. Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at minority@mississippi.org.

Minority Vendor Self-Certification Form Included: _____
Minority Vendor Self-Certification Form Previously Submitted: _____
Not claiming Minority or Women Business Enterprise Status: _____

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

3. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

- 3.1 Does there exist any possible conflict of interest in the sale of items to any institution or to any governing authority? (A yes or no answer is required.)
- 3.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.

4. **Pending Legal Actions**

- 4.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
- 4.2 If so, provide a copy of same and state with specificity the current status of the proceedings.

5. **Non-Disclosure of Social Security Numbers**

Does the Vendor acknowledge that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

Order Address:

Remit Address (if different):

7. **Web Amendments**

As stated in Section III, **DFA** will use the **DFA** website to post amendments regarding RFPs before the proposal opening at

<http://www.dfa.state.ms.us/Offices/BOB/BOBRFQ> and/or at www.stimulus.mississippi.org

The Bureau will post clarifications until noon seven calendar days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **DFA** amendments for RFPs as above stated? (A yes or no answer is required.)

SECTION VII TECHNICAL SPECIFICATIONS

1. **How to Respond to this Section**

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

2. **Mandatory Provisions in Technical Requirements for this RFP.**

- 2.1 All requirements in this item 2 of Section VII of this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification, at the sole discretion of the State.
- 2.2 The proposed solution must be browser-based.

3. **General Overview and Background**

The Mississippi Department of Finance and Administration (DFA), Bureau of Building, Grounds and Real Property Management (BOB) is the service agency that assists State Institutions, Agencies and Departments with construction projects. DFA, BOB is tasked with properly administering funds appropriated by the Mississippi State Legislature in accordance with state laws, regulations and established procedures.

The State of Mississippi desires to improve the energy performance of state-owned buildings through the monitoring of energy efficiency for the individual buildings. DFA is seeking to acquire a Meter Data Management System (MDMS) and services to monitor the energy consumption for approximately 1,100 buildings, initially, at the following locations:

- Copiah Lincoln Community College, Wesson
- East Mississippi Community College, Scooba
- Capitol Facilities, Jackson
(see <http://www.dfa.state.ms.us/Offices/CapFacil/CapFacil.htm> for list of facilities)
- Juvenile Rehabilitation,
- Mississippi Workers' Compensation Commission, Jackson
- Boswell Regional, Magee
- East Mississippi State Hospital, Meridian
- Ellisville State School, Ellisville
- Hudspeth Regional Center, Pearl
- Mississippi State Hospital, Whitfield
- North Mississippi Regional Center, Oxford
- South Mississippi Regional Center, Wiggins and Long Beach
- North Mississippi State Hospital, Tupelo
- South Mississippi State Hospital, Purvis
- Central Mississippi Regional Center,
- Specialized Treatment Facility, Gulfport
- Mississippi Department of Public Safety, Jackson
- Mississippi Department of Education, Jackson
- Alcorn State University, Lorman
- Mississippi Valley State University, Itta Bena
- Coahoma Community College, Clarksdale
- East Central Community College, Decatur
- Mississippi Delta Community College, Moorhead
- Southwest Mississippi Community College, Summit

It is the long-term vision of the State that the energy consumption data of more than 6,000 individual buildings will be monitored.

Upon the issuance of the Notice of Intent to Award for an MDMS (RFP No. 3631), DFA plans to advertise and release a second RFP for the measuring of the Energy Intensity Usage Index

(EIU) for each location and the data transmission. One of the following methods will be used to receive, process, and report digital inputs to measure the EIU for all utilities supplied to each building:

- Installation of new smart meters;
- Modification of existing sub-meters; or
- Energy Management Systems (EMS) data access at each location.

4. Procurement Project Schedule

Date	Task	Section
6/8/10	Referenced on the Web	BoB Schedule
6/9/10	RFP transmitted to Newspaper for Publishing	BoB Schedule
6/14/10	Advertisement Published in the Newspaper ; Posted on the Web	per RFP procedures and ARRA terms
6/21/10	RFP Protest Deadline - 7 calendar days after advertisement	Page 23, Section IV, #37.1
3:00 p.m. 6/21/10	Deadline for Vendor's Written RFP Questions	BoB Schedule
6/28/10	Deadline for RFP Questions Answered and Posted	BoB Schedule
12:00 noon 6/29/2010	Amendments/Clarifications to RFP posted 7 days prior to Proposal Opening Date (or posted extension date, if applicable)	Page 10, Section III, #4 Page 30, Section VI, #7
June 29 - July 6, 2010	Questions/Clarifications in the week prior to the proposal opening, in a written format, at the beginning of the proposal binder or in the comment section for the individual offering	Page 30, Section VI, #7
3:00 p.m. 7/6/2010	Open Proposals and Evaluations Begin – shall not be less than ten (10) working days after the date of the published notice	BoB Schedule and ARRA terms
7/11/10 to 7/12/10	Presentation - If requested	Page 34, Section VII, #5.11
7/12/10	Notice of Intent to Award, Posted, Contact Vendor (BoB interoffice SAF)	Page 17, Section IV, #12.1
7/13/10	Contract changes from vendor 3 calendar days prior to negotiations	Page 17, Section IV, #12.2
7/16/10	Contract Negotiations begin	BoB Schedule
5:30 p.m. 7/19/2010	Intent to Award Protest Deadline - No protest will be considered later than seven (7) calendar days following the posting of the Notice of Intent to Award.	Page 23, Section IV, #37.2
8/1/10	Deadline for Contract Negotiations - 18 calendar days from Notice of Intent to Award	Page 17, Section IV, #12.1
8/2/10	Contract Date	BoB Schedule
8/16/10	Revised Project Work Plan from Vendor 14 calendar days after Contract Execution Date	Page 52, Section VII 17.1.1

5. Statements of Understanding

5.1 The DFA is seeking to acquire the services of a qualified vendor to provide software and associated services to host a web-based MDMS. Such associated services include, but are not limited to, all analysis, customization, integration, implementation, documentation, training, warranty, and support necessary for turnkey implementation of the proposed hosted solution.

- 5.2 The State of Mississippi has and will continue to have sole ownership of all data that will be collected or maintained by the Vendor as a result of this project.
- 5.3 The State acknowledges that the specifications for the MDMS requested by this RFP are not exhaustive, but reflect the known requirements DFA must have met by a full-featured, turnkey solution.
- 5.4 While the State has attempted to define all the requirements necessary for the successful integration/implementation of a MDMS system, the State expects the Vendor to identify and outline any area that was overlooked or misstated.
- 5.5 The Vendor is requested to provide details on the features, functions, or other considerations exclusive of the specified requirements either his company or the proposed solution offers the customer that may provide a distinct value to DFA. In the event that the State agrees such features, functions, and other considerations do provide a distinct benefit, the State reserves the right to give the Vendor additional consideration. The State shall make the sole assessment of the relative merits of each added value proposal to the agency.
- 5.6 DFA places strong emphasis on acquiring a field-proven, mature product with a wide client base from an experienced Vendor. Although the Vendor should be prepared to customize the proposed system to meet the requirements detailed in this RFP, DFA is not anticipating a major customization effort. The solution will be selected based on overall closeness of fit with BOB operations, requiring the least amount of system customization.
- 5.7 The State deems performance of the Vendor on existing Contracts and support after the sale to be of critical importance. Therefore, in the evaluation process for Contract award of this RFP, Vendors with good performance ratings on existing accounts will be at a decided advantage, while Vendors with poor performance ratings will be at a decided disadvantage or be subject to disqualification at the discretion of the State.
- 5.8 While a mature, field-proven product is being sought, DFA also requires a system that is not at the end of its product life cycle and that also reflects the best practices of the industry. Additionally, the technology platform (e.g., database engine, operating platform, etc.) for the proposed product must not be at the end of its life cycle
- 5.9 Other Vendors may be listed in these requirements when referencing service(s) provided to the State. Any mention of other Vendors in these requirements is subject to change based upon the expiration of any current agreements or the acquisition of future agreements during this RFP process.
- 5.10 DFA wants to take advantage of any price decreases that may occur during the course of the Contract.
- 5.11 At the State's option, each Vendor must be prepared to make a presentation of his proposed solution at the Vendor's expense. Presentations, if requested, will be

scheduled in Jackson, and are estimated to be scheduled between July 11, 2010 and July 12, 2010.

- 5.12 The Vendor must understand and provide information in his response to support a deliverable-based project. The Project Work Plan and the Cost Information Summary should define and denote milestones and deliverables, both paid and unpaid, for the entirety of the project.

6. Vendor Qualifications

- 6.1 The Vendor must provide a description of his organization with sufficient information to substantiate proven experience in the products and services being requested in this RFP. Information to be specified includes but is not limited to:

6.1.1 Disclosure of any company restructurings, mergers, and acquisitions over the past 3 years that have impacted any products or services the Vendor has included in this proposal;

6.1.2 The location of its principal office and the number of executive and professional personnel employed at this office;

6.1.3 The number of years the Vendor has been providing the solution and services being proposed;

6.1.4 The number of clients for whom the Vendor is currently providing an MDMS & MDMS support services;

6.1.5 The organization's size (e.g., employees, offices, locations) and structure (e.g., state, national, or international organization);

6.1.6 Whether the Vendor is based locally, regionally, nationally, or internationally as well as its relationship to any parent firms, sister firms, or subsidiaries;

6.1.7 If incorporated, the Vendor must provide the name and the state of incorporation; and

6.1.8 A copy of the corporation's most recent annual report, including consolidated balance sheets and related statements of income, stockholders' or partners' equity and changes in financial position, for each of the three fiscal years preceding the end of the most recent fiscal year. The financial information listed above should be compiled, reviewed, and audited by a Certified Public Accountant.

- 6.2 The Vendor proposal must contain an organizational chart identifying personnel proposed for the project and the chain of command inside the Vendor's organization for that designated staff.

- 6.3 The Vendor must describe the issue resolution and escalation process that will be used within the Vendor's organization to resolve any problems or issues that may arise during the course of the project.

7. Vendor Services

- 7.1 The proposed MDMS solution must be hosted through the services of an experienced Application Service Provider (ASP).

7.1.1 Although it is the intent of DFA to acquire an ASP solution, Vendors may also propose a solution to be hosted locally at the State Data Center.

7.1.2 DFA reserves the right to select a non-ASP model.

- 7.2 The Vendor must provide services associated with the MDMS including, but not limited to:

7.2.1 Hosting platform;

7.2.2 Software licenses;

7.2.3 Installation services;

7.2.4 Customization services;

7.2.5 Integration services;

7.2.6 Interfaces to include data structures for import of smart meter data;

7.2.7 Training;

7.2.8 Warranty; and

7.2.9 Maintenance and Support.

- 7.3 The Vendor must provide a fully secure and efficient data center environment for a successful implementation of an MDMS.

7.3.1 Vendor must describe in detail the data center environment for the proposed solution including, but not limited to:

7.3.1.1 Security;

7.3.1.2 Hosting;

7.3.1.3 Bandwidth;

7.3.1.4 Firewall;

7.3.1.5 Data encryption; and

7.3.1.6 Disaster Recovery.

7.4 The Vendor will be responsible for the initial population of the database for the proposed MDMS solution utilizing information and data provided by the State as well as any data collected or defined during the course of this project.

7.5 The State intends to be very involved in the design of how the proposed MDMS solution will be implemented and utilized by the State of Mississippi. The Vendor must facilitate analysis/design sessions with key SMEs designated by the State to identify and define how the proposed MDMS solution will be utilized by the State of Mississippi including, but not limited to, customization(s), report development, import/export development, data conversion, etc.

7.5.1 The Vendor must document the results of the analysis/design sessions for State sign-off.

7.5.2 The Vendor must submit this documentation to the State for approval prior to the occurrence of the actual development of any customization, report development, import/export development, data conversion, etc.

7.6 The system proposed must be configured with full and complete (1) development, (2) quality assurance, (3) production, and (4) training environments. The testing environment will be used for User Acceptance Testing (UAT) of all modules of the MDMS as well as future software updates to determine if the software can be moved to the production environment.

7.6.1 While the State realizes this requirement is extensive for a web-based hosted application, the Vendor is expected to describe how the State can have a production environment as well as test and train without adversely effecting the production of the MDMS.

8. Functional Requirements

8.1 The proposed MDMS solution must be web-based and must be platform independent.

8.2 The proposed solution must be accessible solely via a web browser (i.e., access the MDMS with no client side software required other than the web browser).

8.2.1 The minimum web browser specifications to which the proposed solution must be compliant are:

8.2.1.1 Internet Explorer version 7;

8.2.1.2 Firefox version 3.6

- 8.3 The proposed MDMS solution must be compatible with and fully functional in a Windows (XP or Vista) environment and/or network environment.
- 8.4 The Vendor must specify the minimum and optimum specifications for all hardware and software required to access and utilize the proposed solution (including PC system and browser technical specifications).
- 8.4.1 Hardware detailed must be able to access the proposed solution for 3 to 5 years.
- 8.4.2 Recommendations detailed must utilize the Vendor's standard growth estimate model and a description of the growth estimate model must be included.
- 8.4.3 Vendor must specify hardware configurations that are not brand specific.
- 8.5 The MDMS must provide the database and processing capacity to efficiently gather, analyze, and monitor energy consumption data gathered from smart meters located across the State of Mississippi.
- 8.5.1 DFA will initially collect data from approximately 1,100+ locations.
- 8.5.2 Within the five-year lifecycle of this project, the DFA plans to collect data from 6,000+ locations.
- 8.5.3 The Vendor must include in their proposal a description of the optimum database and processing capacity of the proposed solution.
- 8.5.4 The Vendor must include in their proposal a description of the maximum database and processing capacity, if applicable, of the proposed solution.
- 8.6 The DFA initially estimates two (2) data points per meter or energy management system (i.e., 3,000 data points). The Vendor will be responsible for the initial configuration of such data points.
- 8.6.1 The Vendor must provide a detailed description of the set up process for 3,000 data points.
- 8.6.2 The Vendor must include a line item for the initial data points set up in the *Cost Information Submission*, Section VIII.
- 8.6.3 The Vendor must also include a separate line item for any additional data points set up in the *Cost Information Submission*, Section VIII.
- 8.7 While the DFA plans to initially collect, maintain, and analyze data associated with electricity only, the proposed MDMS solution must provide functionality to collect, maintain, and analyze data associated with all utilities including, but not limited to:

- 8.7.1 Electricity;
 - 8.7.2 Natural Gas, Standard Cubic Feet (SCF);
 - 8.7.3 Liquefied Petroleum Gas,
 - 8.7.4 Cooling Water;
 - 8.7.5 Heating Water; and
 - 8.7.6 Potable Water.
- 8.8 The MDMS must provide the functionality to collect, maintain, and analyze data regarding the consumption of electricity including, but not limited to:
- 8.8.1 Kilowatts (KW);
 - 8.8.2 Kilowatt Hours (KWh).
- 8.9 The Vendor must explain in detail the process by which electrical data is collected, maintained, and analyzed in the proposed MDMS.
- 8.10 The MDMS must provide the functionality to collect, maintain, and analyze data regarding the consumption of natural gas including, but not limited to SCF.
- 8.11 The Vendor must explain in detail the process by which natural gas data is collected, maintained, and analyzed in the proposed MDMS.
- 8.12 The MDMS must provide the functionality to collect, maintain, and analyze data regarding the consumption of cooling water including, but not limited to:
- 8.12.1 Number of Gallons;
 - 8.12.2 Change in temperature.
- 8.13 The Vendor must explain in detail the process by which cooling water data is collected, maintained, and analyzed in the proposed MDMS.
- 8.14 The MDMS must provide the functionality to collect, maintain, and analyze data regarding the consumption of heating water including, but not limited to:
- 8.14.1 Number of Gallons;
 - 8.14.2 Change in temperature.
- 8.15 The Vendor must explain in detail the process by which heating water data is collected, maintained, and analyzed in the proposed MDMS.

- 8.16 The MDMS must provide the functionality to collect, maintain, and analyze data regarding the consumption of potable water including, but not limited to number of gallons.
- 8.17 The proposed MDMS solution must provide the functionality to define and modify the scheduling for the collection of data (i.e., data collection frequency).
- 8.17.1 The proposed solution must provide the functionality for data collection frequency to be defined and modified by authorized users.
- 8.17.2 The proposed solution must provide the functionality to allow for manual override, by authorized users, of the data collection frequency on an ad-hoc basis.
- 8.17.3 The DFA plans for the data collection frequency to initially be set at fifteen (15) minute intervals.
- 8.17.4 The Vendor must describe in detail the functionality provided in the proposed solution to define and modify scheduling for the collection of data.
- 8.17.5 The Vendor will be responsible for working with the DFA's designated subject matter experts (SMEs) to determine the optimal recommended data collection frequency to be utilized by the State of Mississippi.
- 8.17.6 Additionally, the Vendor will be responsible for working with the DFA's designated SMEs to define the optimal data collection process for the State.
- 8.18 The proposed MDMS solution must provide functionality to receive data from various data sources including, but not limited to:
- 8.18.1 Smart Meters;
- 8.18.2 Energy Management Systems (EMS); and
- 8.18.3 Manual Input.
- 8.19 The Vendor will be responsible for defining the format in which the data must be received.
- 8.20 The Vendor must include in their proposal a list of all smart meters with which the proposed solution is compatible.
- 8.20.1 The Vendor must also include any constraints of the proposed solution regarding compatibility with smart meters.
- 8.20.2 Vendor must include in their proposal a list of all smart meters from which the proposed solution has successfully received data in the past.

- 8.20.3 The State is in the process of releasing an RFP for smart meters. This RFP may be advertised and released prior to the final selection of the awarded Vendor for this project. After Contract execution for this RFP No. 3631, the awarded Vendor may be requested to provide expertise in the evaluation process for proposals received in response to the RFP for smart meters.
- 8.21 The Vendor must include in their proposal a list of all EMS with which the proposed solution is compatible and from which data can be collected.
- 8.21.1 The Vendor must also include any constraints of the proposed solution regarding compatibility with EMS regarding data collection.
- 8.21.2 The Vendor must work with the DFA to define the process for data collection from EMS.
- 8.21.3 Vendor must include in their proposal a list of all EMS from which the proposed solution has successfully received data in the past.
- 8.22 The proposed MDMS solution must provide a GUI by which authorized users may enter data similar to that collected from smart meters and EMS.
- 8.23 The Vendor must include in their proposal if the proposed MDMS solution offers functionality associated with the utilization and compatibility with the ASHRAE Building Energy Quotient Program (BEQ).
- 8.23.1 If this functionality is available, the Vendor must describe this functionality and any associated process(es) in detail.
- 8.23.2 The Vendor must describe how the proposed solution utilizes the BEQ including, but not limited to, the following categories:
- 8.23.2.1 As Designed;
- 8.23.2.2 In Operation.
- 8.24 The Vendor must include in their proposal if the proposed MDMS solution offers functionality associated with out of range alerts.
- 8.24.1 If this functionality is available, the Vendor must describe this functionality and any associated process(es) in detail.
- 8.25 The proposed MDMS solution must provide functionality to import/export data in various formats including but not limited to, comma-delimited file format and Excel.
- 8.26 The Vendor is responsible for creating the import/export process specifically regarding the inventory of locations for the DFA.

- 8.26.1 The Vendor must perform all tasks associated with the initial import of the DFA inventory of locations.
- 8.27 The proposed MDMS solution must provide the functionality to interface/synchronize with Energy Star databases.
 - 8.27.1 The Vendor must work with the State to define the requirements of the Energy Star database interface/data synchronization process for the State of Mississippi.
 - 8.27.2 The Vendor will be responsible for the customization/development of this interface/data synchronization.
- 8.28 The proposed solution must operate in a multi-user environment and be able to handle multiple simultaneous users.
 - 8.28.1 The proposed solution must support a minimum of 250 concurrent users.
 - 8.28.2 Vendor's proposal must also include the Vendor's formula used for estimating concurrent users.
- 8.29 The proposed MDMS solution must provide functionality for designated authorized user(s) to define UserIDs and associated passwords for users of the application.
 - 8.29.1 The DFA intends for all access to be controlled and administered from a central location by designated authorized user(s).
- 8.30 The proposed solution must provide functionality that supports multi-level security definition / role-based security levels.
 - 8.30.1 This multi-level security must allow rights for access to be defined by role/user group.
 - 8.30.2 The assignable rights include, but are not limited to, view, add, update, and delete capabilities.
- 8.31 The proposed solution must provide a graphical user interface (GUI) to allow the designated users to assign the security access.
- 8.32 The proposed solution must provide functionality to support the methodology whereby the application security level determines the level of access each user has and what that individual is allowed to view and perform on each screen or field of the application.

- 8.32.1 Examples of the definition of such security levels would be by:
 - 8.32.1.1 Individual Campus Building (physical location);
 - 8.32.1.2 Site (i.e., one campus including multiple buildings);
 - 8.32.1.3 State Agency (an agency could populate all or part of a building or all or part of multiple buildings);
 - 8.32.1.4 Designated Department/Division within the Agency; and
 - 8.32.1.5 Statewide.
- 8.33 The Vendor must provide the password rules and standards provided in the proposed solution. At a minimum, Vendor must describe how many and what type characters are required for the creation of a valid password, password aging, and password lockout.
- 8.34 The Vendor must also indicate if the proposed solution allows the user to manage their password after the initial creation of the UserID.
- 8.35 The Vendor will be responsible for the initial creation of up to 2500 UserIDs and their associated passwords.

9. Availability of MDMS

- 9.1 The proposed MDMS must be available for access from 7:00 a.m. – 7:00 p.m. , Monday through Friday unless otherwise denoted in these requirements.
- 9.2 During the State of Mississippi’s **Legislative Session** (typically, but not limited to, January through April each calendar year), the proposed MDMS must be available for access 99% of the time on a 24 x 7 basis.
- 9.3 Additionally, there may be specific times throughout the remaining months of the year when the Governor may call a **Special Legislative Session** whereby the MDMS must be available for access 99% of the time on a 24 x 7 basis.
 - 9.3.1 The Vendor would be notified in advance of a **Special Legislative Session**.
- 9.4 Vendor must include in their proposal a description of the availability of the proposed MDMS.
- 9.5 Vendor must include in their cost proposal any cost associated with the additional availability requirements for the MDMS during both **Legislative Session(s)** and **Special Legislative Session(s)**.

10. Reporting

- 10.1 The Vendor must describe the type of report writer that will be utilized, indicating whether it is embedded in the application or a separate piece of software such as Crystal Reports.
- 10.2 Vendor must provide in the proposal examples of standard reports available in the proposed solution and any filter criteria that exists for each standard report.
- 10.3 The proposed solution must provide the ability to automatically generate reports.
- 10.4 The proposed solution must provide the ability to generate reports on-demand.
- 10.5 The State should be able to add reports to a pick list on the application versus having to rely strictly on a third-party tool.
- 10.6 The proposed solution must provide the capability for generating detail and summary reports on all data maintained in the database.
- 10.7 The system should provide graphical reporting capabilities for a specified period of time (e.g., year to date or on a 12 month basis).
- 10.8 The Vendor must facilitate a report identifying analysis session(s) to determine all reports needed for this project; requirements contained in this Reporting Requirements section are not exhaustive.
 - 10.8.1 When a complete list of reports is compiled, the State will assign a priority to each report and identify the reports for which the Vendor will be responsible to develop and which reports the State will develop.
 - 10.8.2 The Vendor will be responsible for developing a maximum of 25 reports as part of this project.
- 10.9 Any general reporting requirements listed in this section shall also apply to any reporting requirements that may be listed in other sections of this RFP.
- 10.10 The proposed solution must provide the functionality to allow reports to be run in real-time or scheduled to run at a specific time via a batch scheduler. Scheduled batch reports must run in an unattended mode.
- 10.11 The proposed solution must provide the functionality to allow for the creation of custom reports. Included in this functionality must be the ability to copy and modify an existing report or query.
- 10.12 The proposed solution must provide the functionality to allow for the creation of ad hoc queries and reports.

- 10.13 The proposed solution must provide the functionality to allow for ad hoc queries and reports to be saved for re-use and future execution. These saved queries and reports must be able to be saved in groupings that would be accessible only to certain user groups.
- 10.14 The proposed solution must provide a reporting mechanism that offers parameter driven queries.
- 10.15 The reporting functionality provided in the proposed application must allow for all queries or reports to be made available in electronic and Word formatted printed form.
- 10.16 The proposed solution must provide the functionality that allows reports and queries to be exported into other formats such as Excel.
- 10.17 The proposed solution must provide the capability to perform online user queries.
- 10.18 The proposed solution must provide the capability of reporting on and pulling into a report any pre-defined or user defined field, or combination of fields, stored in the database.
- 10.19 The proposed solution must provide the capacity for generating detail and summary reports on all pre-defined and user-defined data maintained in the database.
- 10.20 The proposed solution must provide the ability to create, view, print and export reports and report information based on user groups and roles.
- 10.21 The proposed solution must allow for the reports to be structured, at a minimum, by the following categories:
 - 10.21.1 Individual Campus Building (physical location);
 - 10.21.2 Site (i.e., one campus including multiple buildings);
 - 10.21.3 State Agency (an agency could populate all or part of a building or all or part of multiple buildings);
 - 10.21.4 Designated Department/Division within the Agency; and
 - 10.21.5 Statewide.
- 10.22 The proposed solution must allow for all reports to be run for a specified period of time including, but not limited to: weekly, monthly, annually, semi-annually, or fiscal year.

10.23 As previously stated, the DFA has done preliminary analysis to create a list of needed reports including, but not limited to, the following pre-programmed reports and queries:

- 10.23.1 Actual Energy Consumption (BTU);
- 10.23.2 Actual energy consumption against budget (BTU);
- 10.23.3 Energy Usage Index (EUI) (K BTU/Square Foot);
- 10.23.4 EUI against benchmark (K BTU/Square Foot);
- 10.23.5 Calculated energy costs (\$);
- 10.23.6 Calculated energy costs against budget (\$).

10.24 Vendor must include in their proposal a list of all standard or “canned” reports that already exist as part of the proposed solution.

10.25 The Vendor must include in their proposal if the proposed MDMS solution offers any reporting functionality associated with the utilization and compatibility with the ASHRAE Building Energy Quotient Program (BEQ).

10.25.1 If this reporting functionality is available, the Vendor must describe in detail the reports available in the proposed solution.

10.25.2 The Vendor must describe any reporting functionality available in the proposed solution regarding the incorporation of the BEQ including, but not limited to, the following categories:

10.25.2.1 As Designed;

10.25.2.2 In Operation.

10.26 The Vendor must include in their proposal any reporting functionality that is available in the proposed MDMS solution associated with out of range alerts.

10.26.1 If this reporting functionality is available, the Vendor must describe in detail the reports available in the proposed solution including, but not limited to, the manner and type of alert and e-mail notification capabilities.

11. **Training Requirements**

11.1 The Vendor must provide all training required for the successful operation and internal support of the proposed MDMS solution. Training costs must be included as a separate line item in Section VIII, Cost Information Submission.

11.2 The Vendor must describe the proposed training plan to include course content, duration, and maximum class size.

- 11.3 The Vendor must customize all training and address the proposed solution as it pertains to the needs of the State of Mississippi.
- 11.4 The Vendor must provide on-site train-the-trainer training sessions for up to 250 users.
- 11.5 Vendor must provide on-site training on the query/report writing functionality for up to 25 users.
- 11.6 The Vendor must provide on-site technical support staff/System Administrator training for up to 15 technical/System Administrator users.
- 11.7 The Vendor must provide any and all training materials and documentation necessary for the successful delivery of the training sessions.
- 11.8 All training materials and documentation are considered a deliverable and must be submitted to the State with adequate time for the State to review and approve all such material prior to the beginning of the actual training.
- 11.9 All training must be performed on-site in Jackson, Mississippi. The on-site training facility can house up to 25 students.
- 11.10 The Vendor may propose additional training options should DFA desire training beyond the introductory training.
- 11.11 The Vendor must provide all training materials on electronic media (CD ROM).
- 11.12 The Vendor must allow the State to reproduce and/or edit, as needed, any documentation materials provided, including electronic or printed form. This reproduction of documentation materials will be for the sole purpose of this project

12. Documentation

- 12.1 The Vendor must provide “end-user” documentation on the proposed MDMS solution.
- 12.2 The Vendor must provide technical documentation that includes installation, configuration, and administration for the proposed MDMS solution.
- 12.3 The Vendor must provide, at no additional cost, any documentation updates needed for the successful operation of the solution for any system changes, upgrades, enhancements, or new releases to the software. Vendor must specify how such updates and documentation will be distributed to the State.
- 12.4 The Vendor must provide all documentation on electronic media (CD ROM).
- 12.5 The Vendor must allow the State to reproduce and/or edit, as needed, any training materials provided, including electronic or printed form. This reproduction of training materials will be for the sole purpose of this project.

13. Warranty

- 13.1 The warranty period involves a one-year period during which the Vendor must warrant that the system performs as stated in the RFP and Vendor's proposal at no cost to the State. The warranty period must include the necessary Vendor support to correct any system deficiencies found and to provide any other system consultation as needed.
- 13.2 The warranty period will not begin until the proposed solution is fully implemented and accepted by DFA.
- 13.3 The Vendor must agree to warrant any and all application software proposed to be free of errors for a minimum period of one year after acceptance of such software. During this period, the Vendor will agree to correct any errors discovered at his own expense. If the system fails during warranty due to a defect, the Vendor will offer a workaround solution within 24 hours and a full fix within 5 business days.
- 13.4 The Vendor must state and discuss the full warranty offered during the warranty period on all software and services. Vendor is to state if it is longer than the minimum.
- 13.5 This warranty must cover all components of the proposed solution, including all programs, screens, reports, subroutines, utilities, file structures, documentation, interfaces, conversions, services, or other items provided by the Vendor. This warranty will apply to the base package, plus any customized programs, screens, reports, subroutines, interfaces, conversions, utilities, file structures, documentation, or other items proposed and delivered by the Vendor specifically for this procurement.
- 13.6 The Vendor must agree that all corrections made during the warranty period will be considered an integral part of the proposed system and will be available to DFA under the normal license/hosting agreement at no additional charge.
- 13.7 Warranty coverage must also include provision for enhancements, fixes, and upgrades provided as part of Vendor's standard license/hosting/maintenance agreement free of charge. Vendor must acknowledge the inclusion of all required warranty features.
- 13.8 The Vendor must express the Vendor's responsibility to perform immediate high priority attention to any corrections needed. The statement must include that errors will be identified in DFA's sole judgment and that after 10 working days without correction, DFA shall have the right to refuse all of the Vendor's products and be refunded any monies paid to date and terminate this agreement.

14. Support Requirements

- 14.1 Vendor must fully describe other features offered by the proposed post-warranty maintenance/support plan.
- 14.2 The Vendor must specify costs and details for providing annual application maintenance and support beyond the warranty period for the balance of the 5-year lifecycle for the

- 14.3 Vendor must specify the annual support and maintenance increase ceiling to which the Vendor is willing to agree. Price escalations, if any, for annual support and maintenance coverage will be permitted, but shall not exceed the lesser of a 5% increase or an increase consistent with the percent increase in the consumer price index, all Urban Consumer US City Average (C.P.I. –u) for the preceding year.
- 14.4 The Vendor must provide a toll free number for technical support/help desk during normal operating hours. Operating hours are 7:00 AM to 7:00 PM Central Time Monday through Friday unless otherwise denoted below. The Vendor technical support/help desk would be utilized by the DFA, or their designee, staff only.
- 14.4.1 During the State of Mississippi’s **Legislative Session** (typically, but not limited to, January through April each calendar year) or “**Special Session**”, operating hours could be on a 24 x 7 basis.
- 14.4.1.1 The Vendor would be notified in advance of a “**Special Session.**”
- 14.5 The Vendor must provide a four (4) hour telephone response time unless otherwise denoted.
- 14.5.1 During the State of Mississippi’s **Legislative Session** (typically, but not limited to, January through April each calendar year) or **Special Legislative Session**, Vendor must provide a one (1) hour telephone response time.
- 14.6 The Vendor must provide a two (2) business day resolution turnaround unless otherwise denoted.
- 14.6.1 During the State of Mississippi’s **Legislative Session** (typically, but not limited to, January through April each calendar year) or **Special Legislative Session**, Vendor must provide a four (4) hour resolution turnaround.
- 14.7 Vendor is required to keep a log of all support calls made by the Mississippi staff and to provide this log to the individual responsible as the Mississippi application administrator with the current status of open issues, as well as documented solutions to closed issues upon demand
- 14.8 The State prefers that the Vendor also provide on-line web support
- 14.9 The Vendor must indicate how services under this Contract will be handled, from the initial call to reaching a solution. This information should include escalation procedures as well.
- 14.10 The Vendor must specify the normal expected response time to a support call based upon past experience.

- 14.11 For optional consideration, Vendor must specify other support options available and costs so that the State may select appropriate levels of support.

15. Product Information

- 15.1 Vendor must describe the proposed solution including the name of the product line, individual module names, and version of the proposed solution. Vendor must illustrate the history of the proposed solution from its initial development and implementation through whatever evolution has occurred.
- 15.2 Vendor must outline in detail the 5-year plan for the proposed solution.
- 15.3 Vendor must provide the details of what current enhancements are being planned for future releases of the proposed solution and the estimated target dates of availability.
- 15.4 Vendor must provide the average number of upgrades released for the product in the last 3 years.

16. Acceptance Testing

The purpose and net result of the acceptance test is to determine that the system proposed, designed, customized, and installed meets the technical and functional requirements outlined in these specifications. A system considered “acceptance test ready” is defined as a system that has completed a full system test with no known outstanding material defects.

- 16.1 The Vendor must conduct an operational system test of the proposed system and certify, in writing, that the system is ready for acceptance testing and will perform in accordance with requirements stated in this document. The Vendor must ensure that the system in general and each module of the system in particular operate according to specifications before turning the system over to DFA. DFA personnel will not debug modifications for the Vendor.
- 16.2 The Vendor must provide a proposed “Acceptance Test Plan” (ATP) prior to acceptance testing of the system by the State. The ATP must show events, sequences, and schedules required for acceptance of the system. DFA must provide written approval that the proposed ATP is complete and acceptable prior to the beginning of the acceptance testing. The ATP is considered a task completion deliverable.
- 16.3 The Vendor must provide all documentation, as defined in this RFP under Documentation Requirements, for the module(s) being tested before acceptance testing will begin. Acceptance of the documentation will depend on the ability to utilize the information in the application including, but not limited to, system administration and data recovery. If the State determines the documentation to be insufficient, the Vendor must provide within 10 business days and at his own expense, whatever updates may be required to resolve documentation deficiencies.
- 16.4 The Vendor must provide system and user training to the acceptance test team prior to the initiation of the acceptance test period.

- 16.5 The State will conduct acceptance testing of the system after system testing has been completed and certified in writing by the Vendor. The Vendor must participate in the acceptance testing of the system by providing technical staff on site for assistance in demonstrating the functions of the system. The State must demonstrate that the system is operational to ensure that proper training has been received and sufficient knowledge transfer has been accomplished.
- 16.6 The Vendor must agree to and allow for a final acceptance testing period of up to 30 business days in accordance with the work plan delivery schedule.
- 16.7 The Vendor may propose a phased testing approach if some modules are ready for use before others. Regardless of the strategy employed, the complete application system will undergo the full 30 business day acceptance testing by the State once all modules are complete/customized and ready for final implementation.
- 16.8 The State will communicate to the Vendor any deficiencies identified during testing. These deficiencies must be corrected and tested by the Vendor before submitting the corrections to the State for regression testing.
- 16.9 Acceptance testing is complete when the State has successfully completed all acceptance test criteria defined in the ATP, as well as other ad hoc testing as defined by the State; all critical defects have been corrected and successfully re-tested by the State; and the State has been able to emulate two (2) successful billing cycle iterations, as defined by the State, without error. These completion criteria are independent of the 30 business day test period.
- 16.10 In addition to the 30 business day acceptance test period, the State will facilitate a pilot period over 2 billing cycles that will include selected campuses located in various parts of the State of Mississippi. The State will require specific on-site support from the Vendor for the "pilot period."
- 16.11 The Vendor must correct any deficiencies identified during the pilot period. The Vendor must test the corrected deficiencies before submitting them to the State for regression testing.
- 16.12 Acceptance testing shall not in any way relieve the Vendor of his responsibilities to correct any defect during the warranty period.
- 16.13 In the event that one or more modules is not accepted based on the test criteria, the Vendor must, at his own expense, provide software or modifications that may be required to meet the acceptance criteria within 10 business days.
- 16.14 The State reserves the right to reject the system after the third unsuccessful test of any module of the system.

17. Additional Requirements

- 17.1 The Vendor must submit a Project Work Plan as part of proposal detailing the activities, tasks, proposed personnel, estimated hours for each task, timeframes for each project task, assigned resources by name and/or title, major project milestones, quality assurance checkpoints, and all scheduled deliverables with targeted start and end dates. Vendor must clearly define State resource requirements and the skill levels required for each specified State resource. This work plan should include all stages of implementation (installation, configuration, acceptance testing, training, and go live). This work plan should specify tasks in terms of months, weeks, or days from Contract signing. Upon project award, the Vendor and DFA will jointly modify the plan to develop a mutually agreed upon project work plan.
- 17.1.1 Within 14 calendar days of Contract execution date, the awarded Vendor must submit a revised Project Work Plan.
- 17.1.2 The State expects the Vendor to work with the State's appointed project manager to ensure effective project management during all stages.
- 17.2 The Vendor must provide access to the requested software online, along with all installation/implementation, training, maintenance, support and services necessary for turnkey implementation of the proposed MDMS.
- 17.3 The Vendor is requested to provide details on the features, functions, or other considerations exclusive of the specified requirements either his company or the proposed software offers the customer that may provide a distinct value to the DFA.
- 17.4 For evaluation purposes, Vendor must provide a demonstration copy of the proposed software product. Appropriate system, administration, and user documentation must be provided for evaluation. Access to a demonstration version of the product on the Vendor's website also meets this requirement. If available via website, Vendor must provide the appropriate web address along with any security access, if needed.

18. Cost

- 18.1 Vendor's *Cost Information Submission Form (Section VIII)* must be submitted as a separate sealed proposal that is clearly marked: **"Cost Proposal in Response to RFP 3631 for Vendor Name – Do Not Open."**
- 18.2 If Vendor encloses the separately sealed cost proposals in a larger package for mailing, the Vendor must clearly mark the outermost package: **"Contains Technical Proposals and Separately Sealed Cost Proposals for RFP 3631."**
- 18.2.1 Vendor must also clearly mark the separately sealed cost proposals inside the larger package: **"Cost Proposal in Response to RFP 3631 for Vendor Name – Do Not Open."**

- 18.3 Vendor's cost proposal must be clearly marked with the name of the Vendor on the outside of the sealed cost proposal.
- 18.4 Cost proposal must include:
- 18.4.1 One (1) clearly marked original cost proposal;
 - 18.4.2 Five (5) identical copies of the cost proposal;
 - 18.4.3 Originals and copies should be provided in three-ring loose-leaf binders; and
 - 18.4.4 The front and spine of the three-ring loose-leaf binder should be labeled with the Vendor name and RFP number.
- 18.5 The Vendor may quote multiple licensing cost options as long as they are clearly outlined in the cost information submission.
- 18.6 One-time and recurring costs for gap analysis, installation, customization, integration, implementation, training, warranty, maintenance and support, hosting services and all other costs shall be enumerated item by item and a total price quoted for the entire project on the basis of a 5-year lifecycle.
- 18.7 Vendor must provide detailed cost information for all software and service components proposed in response to this RFP. All on-site visits for any of these services should include any travel, lodging, and per diem related expenses.
- 18.8 Vendor must provide a fully loaded hourly change order rate and an unloaded rate in the Cost Information Summary Form, (Section VIII) for any development or modifications that may be deemed necessary or desirable by DFA.
- 18.8.1 For all Change Orders, the Vendor shall be compensated based on the rate for the appropriate level of personnel/expertise required by the Change Order. Vendor must provide fully loaded hourly rates for the following levels of personnel/expertise:
 - 18.8.1.1 Project Manager;
 - 18.8.1.2 Data Base Administrator;
 - 18.8.1.3 Network Administrator;
 - 18.8.1.4 Technical Team Leader;
 - 18.8.1.5 Functional Team Leader;
 - 18.8.1.6 Technical Analyst;

18.8.1.7 Functional Analyst;

18.8.1.8 Document Specialist; and

18.8.1.9 Training Specialist.

18.9 Vendor must provide all cost information for a 5-year life cycle.

18.10 Vendors must provide the discounted price for each line item.

19. Scoring Methodology

19.1 An Evaluation Team will conduct an evaluation of all proposals. Vendors' proposals will be reviewed to ensure all specifications have been properly addressed, furnishing the information needed to facilitate a proper technical, financial, and background evaluation. Vendors may be contacted on those proposals found to require minor clarifications. Vendors whose proposals do not adhere to the specifications, contain consistently vague responses, or omit information may be disqualified from further evaluations.

19.2 The following categories and point allocations will be used in evaluating responses to this RFP. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

NOTE TO DFA: Please review and adjust the scoring as needed to reflect DFA's priorities.

Category	Possible Points
Non-Cost Factors:	
Functional Specifications	35
Vendor Qualifications	5
References	5
Warranty/Maintenance & Support	10
Project Work Plan	5
Total Non-Cost Factors	60
Cost	40
Total Base Points	100
Value Add	5
Maximum Possible Points	105

19.3 As shown, the sum of all categories, other than Value-Add, will equal 100 possible points. Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of

additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

- 19.4 Proposals scoring less than 80% of non-cost factors (exclusive of evaluation points for cost and added value) may be eliminated from further consideration.
- 19.5 All information provided by the Vendors and other information available to the DFA staff will be utilized to evaluate the proposals.
- 19.6 An Evaluation Team, consisting of DFA staff, will conduct an evaluation of all proposals. Vendors' proposals will be reviewed to ensure all specifications have been properly addressed and all information needed to facilitate a proper technical, financial, and background evaluation has been furnished. Vendors may be contacted on those proposals found to require minor clarifications. Vendors whose proposals do not adhere to the specifications, contain consistently vague responses, or omit information may be disqualified from further evaluations.
- 19.7 Vendors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and concise and reflect the most favorable terms available from the Vendor.
- 19.8 **On-site Demonstrations and Interviews** - At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.
- 19.9 Note that onsite demos and interviews of proposed implementation resources may be used to clarify a vendor's response and may, therefore, result in a rescoring.
- 19.10 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.
- 19.11 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.
- 19.12 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.
- 19.13 **Site Visits** – At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

**SECTION VIII
 COST INFORMATION SUBMISSION**

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

Products and Services	Qty	Unit Price	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost
Meter Data Monitoring System (MDMS)							
Perpetual Software Licensing Fee							
Software Installation/DFA Configuration							
Annual Hosting Fee							
Data Points Setup	3,000						
Additional Data Points Setup							
Additional Data Points Monitoring							
Training							
Maintenance and Support							
Total Smart Meter Monitoring Solution Cost:							

SECTION IX REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. References

The Vendor must provide at least five (5) references consisting of Vendor accounts that the State may contact. Required information includes name, address, telephone number, and length of time the account has been a reference. Forms for providing reference information are included on the next page. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Evaluation team's convenience without further clearance or Vendor intercession. Failure to provide this information in the manner described may subject the Vendor's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.

References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:

- 1.1 The reference installation must be similar in function and size to the agency/institution for which this RFP is issued;
- 1.2 The reference installation product/service must be configured similarly or identically to this RFP; and
- 1.3 The reference installation must have been operational for at least twelve (12) months.
- 1.4 Additional reference requirements.
 - 1.4.1 One (1) of the five (5) references must be a government entity (federal, state, local, etc.) in which the Vendor has implemented an MDMS. Please include the name, title, telephone number and e-mail of a contact person in the public entity named. Preference will be given to Vendors with more than one (1) successful similar government entity implementation.
 - 1.4.2 At least one (1) of the five (5) references must be an ASP model. Vendor must include in their proposal the name, title, telephone number and e-mail of a contact person in the entity named.

2. Subcontractors

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and five (5) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this

section. The Vendor must note that the same requirements found in the References section apply to subcontractors.

REFERENCE FORM

Complete five (5) Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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SUBCONTRACTOR REFERENCE FORM

Complete a separate form for each subcontractor proposed.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:

Scope of services/products to be provided by subcontractor:

Complete five (5) Reference Forms for each Subcontractor.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:
Description of product/services/project, including start and end dates:

**EXHIBIT “A”
STANDARD CONTRACT**

A properly executed Contract is a requirement of this RFP. After a Notice of Intent to Award has been made, it will be necessary for the awarded Vendor to execute a Contract with **DFA**. The inclusion of this Contract does not preclude **DFA** from, at its sole discretion, negotiating additional terms, and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION, BUREAU OF
BUILDING, GROUNDS AND REAL PROPERTY MANAGEMENT**

This Software License and Application Service Provider Agreement (hereinafter referred to as “Agreement”) is entered into by and between, INSERT VENDOR NAME, a INSERT STATE OF INCORPORATION corporation having its principal place of business at INSERT VENDOR ADDRESS (hereinafter referred to as “Licensor”), and the Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management, located at 501 North West Street, Suite 1401-B, Jackson, Mississippi 39201 (hereinafter referred to as “Licensee”, “State” and/or “BOB”).

WHEREAS, BOB, pursuant to Request for Proposals (“RFP”) No. 3631 requested proposals for the services of a contractor to host and maintain an Application Service Provider (“ASP”) solution for a meter data management system; and

WHEREAS, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 “Active User” means BOB employees, and authorized state employees of various agencies actively participating on the system in any given month of operation, who shall be

bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

1.2 “Available Date” means the date upon which Licensor notifies BOB that the Software may be accessed on the Licensor’s ASP server and BOB may begin acceptance testing.

1.3 “Content” means any content provided by or through Active Users for use with the Software.

1.4 “Documentation” means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.

1.5 “Enhancements” means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

1.6 “Licensee” means the Mississippi Department of Finance and Administration, Bureau of Building, Grounds and Real Property Management, its employees, authorized state employees of various agencies and any third party consultants or outsourcers engaged by BOB who have a need to know and who shall be bound by the terms and conditions of this Agreement.

1.7 “Licensor” means INSERT VENDOR NAME, and its successors and assigns.

1.8 “Products” means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

1.9 “Services” means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

1.10 “Software” means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based meter data management system and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

1.11 “Software Error” means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee’s negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not

conform to Licensor's specified data format, (d) operator error, or (e) use not conforming to the Licensor's supported technical environment specified in the Documentation.

1.12 "Supported Interfaces" means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

ARTICLE 2 PERIOD OF PERFORMANCE

2.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the five (5) year hosting term. The web-based meter data management system, as customized for the State of Mississippi, must be implemented; fully functional; accepted by BOB, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before October 4, 2010, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the five (5) year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for two (2) one year terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor shall notify BOB of the impending expiration and BOB shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the ASP services.

2.2 This Agreement will become a binding obligation on the State only upon the proper execution of completed Contracts (signed by both parties, etc.).

ARTICLE 3 SCOPE OF SERVICES

3.1 The Licensor agrees to provide to BOB an ASP based meter data management system and Services and associated deliverables required to provide, host and maintain a web based application for BOB as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.5 below.

3.2 The Licensor acknowledges that BOB intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain BOB's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide BOB access to the host website; (e) meet with BOB on a regular basis at a mutually agreeable time, and as

otherwise requested by BOB, to discuss the status of the project, and (f) if required by BOB, submit written project status reports.

3.3 The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow BOB an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after BOB has communicated its conceptual approval of the results the Licensor plans to provide. BOB shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and BOB.

3.4 It is understood by the parties that the project work plan must be in place within fourteen (14) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

3.5 Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by BOB pursuant to the mutually agreed upon project work plan;
- B.** Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C.** Ensuring that the site is accessible through BOB's published universal resource locator ("URL") rather than through Licensor's site address;
- D.** Reviewing with BOB the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with BOB as to reasonable timelines for implementing Content updates delivered to the Licensor that will be posted on the site;
- E.** Tracking date sensitive items to ensure timely updates;
- F.** All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;
- G.** Working with BOB to achieve access rates that meet BOB's needs;

- H.** Providing security for the host site that is agreeable to BOB with Licensor responsible for all necessary equipment and software related to security;
- I.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J.** Completing daily backups of the site;
- K.** Notifying BOB at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- L.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- M.** Participating with BOB in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N.** Maintaining the confidentiality of the data entered;
- O.** Providing BOB access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- P.** Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- Q.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- R.** Providing 24x7x365 support of the web site, including sub-domain support;
- S.** Providing redundant internet connections;
- T.** Providing Dual T1 or greater connectivity;
- U.** Providing FTP and remote configuration access;
- V.** Providing SSL secure server support;
- W.** Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to BOB;
- X.** Maintaining sufficient bandwidth and server capacity to meet BOB and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y.** Ensuring that upon termination or expiration of this Agreement that transition of the site from the Licensor to BOB or to a successor host will be accomplished at no expense to BOB, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

3.6 In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide Licensee thirty (30) days written notification of such revision or upgrade, and shall,

upon request of Licensee, furnish such revision or upgrade to Licensee free of charge as part of the ASP fees.

ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES

4.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software over the Internet and to use it for Licensee's business operations and use it on the Licensor's host server for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Software, Products and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any Enhancements or additional Software Products Licensee may procure from Licensor.

4.2 Licensor will provide Licensee storage space on and access to Licensor's Software via the Internet and provide Internet access to the Software to the Active Users through Licensor's site ("ASP Services").

4.3 In connection with the ASP Services, Licensor will provide and maintain all Software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Software.

4.4 The Software will be accessible at least ninety nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to causes beyond the control of Licensor. In the event that BOB or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse BOB twenty five percent (25%) of the monthly ASP hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured location with restricted access.

4.5 Licensor shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Licensor's application services using fully redundant hardware-based firewalls. Licensor's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

4.6 The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement.

4.7 Licensor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensor acknowledges that the Content may contain valuable trade secrets of Licensee and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

4.8 Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Licensor.

ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE

5.1 Licensor shall deliver, install, and make available the Software and Documentation to the Licensor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

5.2 Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

5.3 BOB shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Software to confirm that it performs without any defects and performs in accordance with the requirements of this Agreement. BOB shall immediately thereafter notify Licensor of any defects in the Software, which must be corrected. Thereafter, Licensor shall have ten (10) business days in which to either repair or replace the defective Software unless both parties agree to extend this period, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software within this ten (10) day period, BOB may terminate this Agreement pursuant to the Termination Article herein.

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

6.1 The total compensation to be paid to the Licensor by BOB for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of INSERT TOTAL COMPENSATION, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

6.2 Licensor shall submit invoices with the appropriate documentation to BOB monthly for any month in which ASP services and/or other Services are rendered. Licensor shall submit invoices and supporting documentation to DFA electronically during the term of this Agreement using the processes and procedures identified by the State. BOB agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides

for payment of undisputed amounts by BOB within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that BOB is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Licensor’s choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Licensor shall remain responsible and liable for full performance.

6.3 Acceptance by the Licensor of the last payment due from BOB under this Agreement shall operate as a release of all claims for money against the State by the Licensor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 7 WARRANTY

7.1 Licensor represents and warrants that it has the right to license the Products provided under this Agreement.

7.2 Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 3631 and Licensor’s Proposal, as accepted by the State, in response thereto.

7.3 During the term of this Agreement, the Licensor represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as “Defect”) which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licensor of its responsibilities to correct any Defect during the warranty period. The Licensor shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless BOB consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Software within the mutually agreed upon time frame after receipt of notice of the Defect, BOB shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee’s rights hereunder are in addition to any other rights Licensee may have.

7.4 During the term of this Agreement, the Licensor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and

shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

7.5 Licensor represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

7.6 Licensor represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

7.7 The Licensor represents and warrants that, upon completion of the project, the Licensor, and all subcontractors, if any, shall convey to BOB copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

7.8 Licensor represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licensor shall provide BOB with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

7.9 The Licensor represents and warrants that the deliverables provided to BOB under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State

which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

7.10 Licensor represents and warrants that the host site provided by the Licensor shall be reasonably expandable and scalable so BOB can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the licensed Software and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to BOB at no additional cost to BOB.

7.11 Licensor represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licensor uses in the performance of this Agreement.

7.12 Licensor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit,

certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit.

7.13 Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

7.14 Licensor represents and warrants that no official or employee of Licensee or of DFA, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

7.15 The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the DFA Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such Contract, provided that the existence of the facts upon which the DFA Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of Contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

7.16 Contractor understands and agrees that some or all of this Agreement is funded by the American Recovery and Reinvestment Act of 2009 and, as such, represents and warrants that it

will comply with the requirements of the American Recovery and Reinvestment Act of 2009, as set forth in Exhibit B, which is attached hereto and incorporated herein by reference and will maintain adequate records to verify its full compliance with those requirements.

ARTICLE 8 EMPLOYMENT STATUS

8.1 Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

8.2 Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

8.3 Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

8.4 Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

ARTICLE 10 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

11.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors

Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

11.2 Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

11.3 Licensor must obtain the written approval of BOB before subcontracting any portion of this Agreement. No such approval by BOB of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of BOB in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that BOB may deem necessary.

11.4 Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

11.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

ARTICLE 12 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of BOB to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to BOB for the payments or performance due under this Agreement, BOB shall have the right to immediately terminate this Agreement, in whole or

in part, without damage, penalty, cost or expense to BOB of any kind whatsoever, except for payment for work completed by Licensor and accepted by BOB prior to termination. The effective date of termination shall be as specified in the notice of termination. BOB shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 13 TERMINATION

13.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) BOB may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) BOB may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

13.2 In the event BOB terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by BOB prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

ARTICLE 14 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by Contract.

ARTICLE 15 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

ARTICLE 16 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

ARTICLE 17 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

ARTICLE 18 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

Licensor shall notify BOB in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or BOB by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to BOB shall be considered a material breach of this Agreement and BOB may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 20 AUTHORITY TO CONTRACT

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 21 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent

by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. Licensee's address for notice is: Charles R. Snowden, Director, Mississippi Department of Finance and Administration's Bureau of Building, Grounds and Real Property Management, 501 North West Street, Suite 1401-B Woolfolk Building, Jackson, Mississippi, 39201. The Licensor's address for notice is: INSERT VENDOR NOTICE INFORMATION. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 23 INSURANCE

Licensor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish BOB with a certificate of conformity providing the aforesaid coverage.

ARTICLE 24 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Public Procurement Review Board (PPRB). This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 25 COMPLIANCE WITH LAWS

Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be

amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 26 CONFLICT OF INTEREST

Licensor shall notify BOB of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to BOB's satisfaction, BOB reserves the right to terminate this Agreement.

ARTICLE 27 SOVEREIGN IMMUNITY

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 28 CONFIDENTIAL INFORMATION

28.1 Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

28.2 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. DFA will provide third party notice to Licensor of any requests received by DFA for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in DFA Public Records Procedure.

ARTICLE 29 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Licensor on the basis of draftsmanship or preparation hereof.

ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All Content collected by the Software shall be the property of Licensee. Licensor may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensor and are excluded from this Article.

ARTICLE 31 NON-SOLICITATION OF EMPLOYEES

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of BOB's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by BOB and the Licensor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 32 ENTIRE AGREEMENT

32.1 This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. RFP No. 3631, and Licensor's Proposals, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

32.2 The Contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 3631 and written addenda, and
- D. Licensor's Proposal, as accepted by the State, in response to RFP No. 3631.

32.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Licensor's Proposal").

ARTICLE 33 STATE PROPERTY

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

ARTICLE 34 SURVIVAL

Articles 7, 14, 18, 22, 27, 28, 30, 31, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

ARTICLE 38 NETWORK SECURITY

Licensor and BOB understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Licensor and BOB agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (e.g., VPN concentrator, PIX firewall, etc.) on the State's premises. Licensor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Licensor's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-

standard security protocols and manufacturer engaged at the time of Contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Licensor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 39 SOFTWARE SUPPORT AND MAINTENANCE

39.1 As part of the Software support and maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3631 and the Licensor's Proposal in response thereto. Licensor shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensor shall provide support only with respect to the then-current generally available version of the Software.

39.2 Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Software Products twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

39.3 Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

39.4 Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon time frame.

39.5 Severity Level 3 implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon time frame.

ARTICLE 40 FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

ARTICLE 41 RETAINAGE

To secure the Licensor's performance under this Agreement, the Licensor agrees that the Licensee shall hold back as retainage ten percent (10%) of each amount payable, including amounts payable under change orders, under this Agreement. The retainage amount will continue to be held until Licensee completes acceptance tests ensuring that the meter data management system properly functions with the smart meters being procured through a separate request for proposal.

ARTICLE 42 REPRESENTATION REGARDING CONTINGENT FEES

The Licensor represents that it has not retained a person to solicit or secure a DFA Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Licensor's bid or proposal.

ARTICLE 43 FAILURE TO ENFORCE

Failure by the DFA at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the DFA to enforce any provision at any time in accordance with its terms.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**Mississippi Department of
Finance and Administration
Bureau of Building, Grounds
and Real Property Management**

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXHIBIT “1” to Exhibit “A”
PAYMENT SCHEDULE**

Schedule to be determined after awarding Vendor is determined with specific values per deliverable to be listed.

EXHIBIT “2” to Exhibit “A”

**Reporting and Registration Requirements Under Section 1512 of the
American Recovery and Reinvestment Act of 2009.**

The recipient* agrees to the following reporting and registration requirements of Section 1512 of the American Recovery and Reinvestment Act and in accordance with 2 CFR § 176.50, if applicable:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(e) The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this Contract from the contractor’s own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the Contract.

*As used here and hereafter, recipient means “any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.” 2 CFR § 176.30.

Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods of Section 1605 of the American Recovery and Reinvestment Act and in accordance with 2 CFR §176.140 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals,

docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic

iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or

manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is

nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [*Include all delivery costs to the construction site.]			

Required Use of American Iron, Steel, and Manufactured Goods Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods (covered under International Agreements) of Section 1605 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.160 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

Designated country—

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic,

Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or

products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel, and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel,

and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the

foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other

than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]			
[Include other applicable supporting information.]			
[*Include all delivery costs to the construction site.]			

Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act.

The recipient agrees to the following wage rate requirements of Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.190 when issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair, if applicable:

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the DavisBacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard DavisBacon Contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard DavisBacon Contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of DavisBacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Recipient Responsibilities regarding tracking and documenting Expenditures under the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following tracking and documenting responsibilities required by Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176210, if applicable:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111– 5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and NonProfit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Requirement to Comply with Provision of Section 902 of the American Recovery and Reinvestment Act of 2009

Section 902 of the ARRA requires that each Contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Required Whistleblower Protection Under Section 1553 of the American Recovery and Reinvestment Act of 2009.

Section 1153 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, provides protections for certain individuals who make specified disclosures relating to recovery Act funds. Any non-federal employer receiving recovery funds is required to post a notice of the rights and remedies provided under this section of the Act.

Required Provision Noting Authority of Inspector General in of Section 1515(a) of the American Recovery and Reinvestment Act of 2009

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this Contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this Contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Required Provision to Comply with NEPA and NHPA
Construction, Renovation, and Remodeling Projects Only

ARRA funded projects may be required to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes. If the ARRA program from which funds are to be expended requires such language, then NEPA and NHPA requirements may need to be included in contracts or sub-grants. Such language would be dependent on federal oversight agency guidance as well as from the following: http://nepa.gov/nepa/regs/CEQ_1609_NEPA_Guidance_03-12.pdf (NEPA only)

Requirement to Acknowledge Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Requirement Regarding Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Requirement to Comply with Anti-Discrimination and Equal Opportunity Statutes

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA Recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Requirement to Comply With All Other ARRA Requirements

The contractor will comply with any other requirements of ARRA, upon notification by this entity.

Requirement to Comply with E-Verification Provision of Section 71-11-3 of the Mississippi Code of 1972, as amended

The respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (§71-11-3 of the Mississippi Code of 1972, as amended) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, and approval of the Social Security Administration or Department of Homeland Security, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject contractor to the following:

- (a) Termination of this Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) The loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both.
- (c) In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.