



REQUEST FOR QUALIFICATIONS

Professional Surveying Services

QUESTION DEADLINE: 2:00 p.m. EST, October 8, 2020

PROPOSAL DEADLINE: 3:00 p.m. EST, October 15, 2020

Contact Information

Direct Inquiries To: Penny Helms
UCPS Purchasing & Contract Coordinator
penny.helms@ucps.k12.nc.us
704-296-3160 ext. 6759

Submittals

Send Proposals To: UCPS Facilities Department
Attn: Penny Helms/RFQ Professional Surveying Services
201 Venus Street
Monroe, NC 28112

Important Notes:

Proposals containing changes to any terms and conditions listed within this solicitation may render the proposal as unacceptable and unresponsive for award.

All inquiries are to be made in writing and submitted to the individual listed above. Any attempt to contact any elected local officials or school system administration may result in disqualification of the proposal.

It is the sole responsibility of the Firm to assure all addenda have been received prior to submittal.

I. INTRODUCTION:

Union County Public Schools is seeking Qualification Proposals from skilled, experienced Surveying Firms.

It is the intent of Union County Public Schools to select firm(s), as a result of this RFQ, that are currently licensed in the State of North Carolina to perform the professional services.

II. SCOPE OF WORK

For general purposes the scope may entail, but not limited to, lines, boundary lines, topography, existing facilities or structures. Services may include photogrammetric surveys, aerial diagrams, locating existing utilities, culverts, and others as deemed pertinent for design, engineering purposes.

A list of UCPS projects that may require these services are listed within Appendix A.

UCPS is specifically looking for Professional Surveying Firms with a minimum of 10 years of experience successfully completing projects associated with sports fields and drainage improvement projects.

III. SELECTION PROCESS

Union County Public Schools will review the qualification proposals and may request interviews. If contacted, the firm should make themselves available and be ready to provide a presentation of the proposal submitted. All costs associated with the proposal and presentation shall be at no cost to Union County Public Schools. Union County Public Schools reserves the right to reject any or all proposals.

Union County Public Schools may provide a list of services and goals to be accomplished for a specific project to the selected firm. The firm shall provide a written response addressing the requirements of the project requested.

The written response (proposal) shall include the description of the work to be completed, schedule for completing the work, and the price to complete the work. Once the written response (proposal) is received, Union County Public Schools will review and may negotiate the proposal. Authorization for commencement of work will be by issuance of a purchase order. If an agreement is not reached within a reasonable time, UCPS will contact another qualified firm. UCPS reserves the right to make multiple awards in response to this RFQ.

IV. PROPOSAL SUBMITTAL REQUIREMENTS

Submittal shall include six (6) copies of their proposals in a sealed envelope/box along with one digital version of the proposal (in PDF Format) to the address provided on page 2 of this solicitation document. No facsimile or email responses will be accepted or considered. The electronic copy shall be included in the proposal package as a USB Flash Drive with the Firm Name and Professional Service clearly marked. Responses must be received no later than the time and date listed on page 1 of this solicitation document. Any submittal received after the deadline by any delivery method will not be considered or evaluated.

V. RFQ QUESTIONS

Questions are to be submitted via email to the individual listed on page 1 of this solicitation document. Subject line shall be RFQ-Professional Surveying Services. Only emailed questions will be addressed and answered. Written response is the only official method by which interpretation, clarification or additional information will be given. Oral interpretations or clarifications will be without legal effect. No personal inquiry or marketing meetings will be conducted or allowed. Union County Public Schools will not entertain any questions after the deadline date provided on page 1 of this solicitation document.

VI. PROPOSAL SUBMITTAL FORMAT AND CONTENTS

The instructions below provides guidance and information to prepare concise responses to this RFQ. The purpose is to establish the format and contents of proposal so responses are complete, contain all essential information and can be easily evaluated.

VII. PROPOSAL FORMAT

Qualification proposals are to not to exceed 20 pages, must be presented in a well-organized and concise manner. A single volume booklet is preferred. Cover page, Tabs, Certificate of Insurance, resumes, and blank pages are not counted towards the limit. A page is defined as an 8.5" x 11" or 11" x 17" sheet that contains text, graphics, or other printed material.

VIII. PROPOSAL CONTENT

The following items must be addressed in your package:

- ✓ Introductory Letter: Clear response identifying the information provided below.
 - Firm's Name and Address
 - Contact Information (i.e. phone number, facsimile number, email, etc.)
 - Identify projects listed within Appendix A that you have an interest and provide a general statement of why Union County Public School should select your firm.
 - Acknowledgement of any issued Addenda.

- Letter shall be from the Principal of the firm or Equivalent.
- ✓ Qualifications: Provide information listed below to clearly show the firm's qualifications.
 - Provide similar experience illustrating specialties in surveying.
 - Site specific projects that were completed within the past five (5) years with special emphasis given to the type of projects listed within Appendix A and list a reference with contact information for each project cited.
- ✓ Experience: Provide information listed below to show the firm's experience.
 - Indicate any previous project experience working with a government agency, as a Professional Surveyor, within the past five (5) years. Please include brief project statement, primary contact, and the year the work was performed.
- ✓ Project Approach: A detailed description of how your firm proposes to approach each project. Include sufficient discussion of proposed methodologies, techniques and procedures to assist Union County Public Schools with any Professional Surveying needs that may arise.
- ✓ Project Schedule: Provide an explanation on how your firm determines project schedule and what methods your firm uses to ensure schedule is met. If a purchase order is issued, selected Firm must be in position to begin work upon notice to proceed.
- ✓ Project Team(s): Provide an Organization Chart of project team specifying dedicated Project Manager, Key Personnel, and Sub-Consultants assigned to the team and availability of backup personnel that will support work on any issued project. Include resumes with a brief summary identifying roles, responsibilities, and general qualifications (i.e. professional certifications, licenses) of each team member (including sub-consultants) as well as education, years of experience (with current firm and other firms). If more than one Project Manager or team is desired, please include this information and describe why this is necessary and how it is anticipated to work.
- ✓ Committed Work Load: Provide information relative to the availability of each team member and indicate a percentage of project time that each team member is anticipated to be working on an assigned project.
- ✓ Insurance and Contract Statement: Provide a statement that the firm will provide insurance as specified in Appendix B (Draft Agreement for Professional Services) and provide a copy of the current Certificate of Insurance. Include a statement that the Draft Agreement for Professional Services (Appendix B) have been reviewed; that the firm is willing to meet all of the requirements set forth therein; and that the firm is prepared to sign Union County Public Schools agreement as written. (Any requested changes to Professional Services Agreement must be specifically requested in the Proposal). Such requests will be taken into account as one of the evaluation factors when reviewing the

Proposal and may be denied by Union County Public Schools in its discretion if Firm is selected and awarded a project.

- ✓ Identification of Lawsuits and Administrative Claims/Fine: Firms must identify all lawsuits, administrative claims, and fine proceedings the Firm has been a party to in the past five (5) years. Include any fines levied by any governmental unit relating to the services pertaining to this solicitation document (i.e. EEOC, Department of Labor).
- ✓ Unit Price Schedule: Provide hourly rates for each classification of personnel.

IX. EVALUATION METHOD

1. Firm Experience/Reputation/Workload: The firm's experience in similar work and the record of successful results of that work. Consideration will be given to the firm's ability to take on additional work, demonstrate understanding of Union County Public Schools goals and purposes of this RFQ, specific management approach, how well the firm's organization structure show sufficient depth of its present workload, approach to managing Union County Public Schools budget, time, and the firm's ability to offer the extensiveness and quality of services required.
2. Understanding the Scope of Work: The ability of the firm to outline a realistic approach to providing Professional Surveying Services for all size of projects will be considered. A comprehensive understanding of local conditions, innovative processes for accuracy and cost savings will be given consideration. rvicees will be given consideration.
3. Experience of Personnel assigned to this Project Team: Union County Public Schools will consider individual qualifications of project team members who will be assigned to do a majority of work on assigned projects. Consideration will include the Project Manager's individual qualifications, experiences, and location, which key personnel will be assigned to the project, and any sub-consultant's individual experience, qualifications and location. The Project Manager's past and/or current experience working with school systems will be given consideration. Union County Public Schools reserves the right to request substitution of sub-consulting firms.
4. Schedule: Consideration will be given to the firm's availability to handle projects of various sizes within a reasonable time-frame. Proposed level of effort will also be used to determine how well the firm understands the project components and a project is scheduled. Consideration will also be given to the firm's ability to meet schedules and responsiveness to the staff of Union County Public Schools.

X. MINIMUM REQUIREMENTS FOR CONTRACT EXECUTION

All proposal packages and materials submitted hereunder become the exclusive property of Union County Public Schools. Union County Public Schools reserves the right to reject any or all submittals. This submittal request is neither a contractual offer nor a commitment to purchase services. Union County Public Schools assumes no contractual obligation as a result of the issuance of this request, the preparation or submission of a qualifications statement by a Firm, the evaluation of statements, or final selection. All submissions may be kept by Union County Public Schools and may be disclosed to third parties at Union County Public School's discretion.

Negotiating with Others

A Professional Services Agreement will be negotiated with the selected firm based on the proposed scope of work, deliverables, project schedule, fee schedule and project team as outlined in their proposal. Appendix B contains Union County Public Schools standard "Draft" Agreements for Professional Services may serve as basis for contracts with the selected firm. At UCPS discretion, AIA Owner/Architect Agreement may be used in place of Appendix B.

Union County Public Schools reserves the right to award a single or multiple contracts, based on initial offers received from firms, without discussion and without conducting further negotiations. Union County Public Schools may also, at its sole discretion, have discussions with firms and Union County Public Schools may enter into negotiations separately with such firms. Union County Public Schools shall not be deemed to have finally selected a firm until a contract has been successfully negotiated and signed by all parties.

Responsibility for Costs

The firm shall be fully responsible for all costs incurred in the development and submission of this submittal. Submittal documents should be prepared simply and economically, providing a straightforward and concise description of the Firm's capabilities to satisfy the requirements of the request. Emphasis should be placed on completeness and clarity of content. Selected Firms may be asked to present in person the substance of their response to Union County Public Schools staff if necessary. All costs of such presentations shall be borne solely by the Firm.

Complete Services/Products

The Firm shall be required to (a) furnish all tools, equipment, supplies, supervision, transportation, and other execution accessories, and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in and form a permanent part of the completed work; (c) provide and perform all necessary labor; and (d) in accordance with good technical practice, with due diligence, and in accordance with the requirements, stipulations, provisions, and conditions of this document and the resultant contract, execute and complete all specified work to the satisfaction of Union County Public Schools.

Public Record/Confidentiality

Responses to the RFQ will become public record and, therefore, be subject to public disclosure. If a Firm submits any record or portion of a record, that the Firm considers to be a trade secret meeting the definition contained in NCGS 66-152 (2), Firm shall clearly mark in the top right hand corner of each document containing the trade secret as CONFIDENTIAL. Union County Public Schools will only withhold information that meets requirements provided by NCGS 132-1.2 et seq.

Minimum Credentials

Firm is required to submit evidence that they have relevant experience and have previously delivered similar services. Firm may additionally be required to show that they have satisfactorily performed similar work in the past and that no claims of any kind are pending against such work. Any Firm who is engaged in any work which would impair their ability to perform or finance this work or has outstanding claims pending for work of a similar nature, either completed or in progress, will not be chosen.

No submittal will be accepted from, nor will a contract be awarded to, any Firm who is in default, as surety or otherwise, upon any obligation to Union County Public Schools, or is deemed to be irresponsible or unreliable by Union County Public Schools.

Firm(s) must have the financial ability to undertake the work and assume professional liability. Firm(s) must have an adequate accounting system to identify costs chargeable to the Project.

Conflict of Interest Statement

By submission of a response, the Firm agrees that at time of submittal, it: (1) has no interest (including financial benefit, commission, finder's fee, or any other remuneration) and shall not acquire any interest, either direct or indirect, that would conflict in any manner or degree with the performance of Firm's services, and (2) will not benefit from an award resulting in a "Conflict of Interest." A "Conflict of Interest" shall include holding or retaining membership, or employment, on a board, elected office, department, division, bureau, or committee sanctioned by and/or governed by Union County Public Schools. Firms shall identify any interests, and individuals involved, on a separate paper within response and understand that Union County Public Schools, in consultation with legal counsel, may reject their proposal.

Changes in Personnel

Changes to personnel on project team(s), particularly a Project Manager, are to be avoided wherever possible. If during the contract negotiation phase the Firm requests to make a change to any personnel listed within the Firm's submitted proposal, the request to Union County Public Schools must be made in writing and detail the proposed replacement personnel, resume(s) and reason(s) as to why the replacement is needed. Union County Public Schools will consider the request and may or may not accept the personnel changes. If Union County Public Schools denies the Firm's request for a change in personnel, the Firm will be required to confirm in writing that the personnel submitted within Firm's original proposal will perform the work, or Union County Public Schools will no longer consider the Firm as the best qualified firm and may enter into contract negotiations with the next most qualified Firm.

APPENDIX A

POTENTIAL PROJECTS

(Response to this RFQ, including interviews, are not to include any work products, designs, etc. that strictly pertains to the projects listed below. Such information will not be considered during evaluation process).

Projects include: Boundary Lines, Field Surveys, Topography, Photogrammetric Surveys, Aerial Surveys, Utility Line Survey.

Project types: New Construction, Major Renovations, Surplus of Property, Small Projects.

APPENDIX B

PROFESSIONAL SERVICES AGREEMENT (DRAFT)

PROFESSIONAL SERVICE AGREEMENT
Professional Surveying Services

This Contract is made and entered into this __, **day of month, year** between **The Union County Board of Education** (“UCBOE”) located at 400 North Church Street, Monroe, North Carolina 28112 and **Firm Name, located at Address.** (“Surveyor”)

For and in consideration of the mutual promises set forth in this Contract, the parties do mutually agree as follows:

1. Obligations of Surveyor.

The Surveyor will provide professional service (“Services”) as described within the Scope of Work identified within Surveyor’s Response incorporated herein by reference as Exhibit 1.

Surveyor will be deemed to have accepted a Purchase Order and be obligated to provide the Services and/or Goods outlined in the Purchase Order in accordance with the price and other terms of the Purchase Order, and the terms and conditions hereof, unless within 24 hours after issuance of Purchase Order, Surveyor notifies the Project Coordinator (as hereinafter defined) in writing that it does not accept the Purchase Order and will not provide the requested Services and/or Goods.

Surveyor agrees to perform the Services in a timely, complete, and professional manner and in accordance with the terms and conditions of this Contract. Furthermore, the Surveyor represents and warrants that (i) it is duly qualified to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by others practicing under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, and (iv) it shall perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

Surveyor acknowledges that the Contract Time under which Services to be provided include UCBOE and other governing agencies review time, must be strictly adhered to by Surveyor, and that each milestone phase must be met by Surveyor, as well as the final completion date.

It is the responsibility of the Surveyor to maintain the schedule. The Surveyor recognizes that the projects assigned under this Agreement is to be performed as expeditiously as is practical. It is understood that the schedule may vary dependent on the project complexity; therefore, a mutually agreed schedule is to be reached prior to Owner’s issuance of purchase order. No

deviation from the schedule shall be allowed without written approval for a change in the schedule. If for any reason it appears any phase of the Project will be delayed, the Surveyor agrees to immediately notify UCBOE, in writing, and provide an explanation of the delay and a plan to bring the design services into line with the schedule. Should UCBOE determine that the Surveyor is behind schedule, the Surveyor shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the UCBOE. In the event Surveyor is delayed in the progress of providing the Services, through no fault of Surveyor, then Surveyor may be entitled to an extension of the Contract Time. If a delay in the schedule is approved by the UCBOE, the schedule will be amended and the Surveyor will complete the work within the amended schedule at no additional cost to the UCBOE.

INSURANCE. In addition to the insurance required pursuant to Section 16 of the Standard Terms and Conditions, the Surveyor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to the UCBOE and authorized to do business in the State of North Carolina:

Professional Liability Insurance

The Surveyor will be required to take out and maintain Professional Liability Insurance providing liability insurance limits at least in the amount of \$1,000,000. The Surveyor will be required to maintain this coverage for a period of at least two (2) years beyond substantial completion of the contract.

Failure to furnish insurance certificates or to maintain such insurance shall be a default under this Contract and shall be grounds for immediate termination of this Agreement.

PROFESSIONAL CONSULTANTS/SUBCONTRACTORS. The Surveyor agrees to provide the names of persons or entities with which the Surveyor intends to contract for the performance of specialized portions of the services described in this Contract to UCBOE. UCBOE and/or Owner's representatives shall promptly inform the Surveyor whether there is reasonable objection to any person or entity described therein. The Surveyor shall not contract with a proposed person or entity to which a reasonable and prompt objection has been raised. If there is an objection to a person or entity proposed by the Surveyor, the Surveyor shall furnish in writing the name of an alternate to whom there is no objection.

If the Surveyor desires to change such persons or entities during the term of this Contract, the Surveyor shall notify UCBOE in writing of any proposed changes, and UCBOE shall promptly inform the Surveyor whether there are reasonable objections to such change.

This contract does not grant the Surveyor the right or the exclusive right to provide specified services to UCBOE. Similar services may be obtained from sources other than the Surveyor (or not at all) at the discretion of the UCBOE.

The Surveyor shall begin work immediately upon in accordance with instructions from UCBOE.

The Surveyor represents and warrants that (i) it is duly qualified and licensed to provide the Services, (ii) it will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by Surveyor providing similar services under similar conditions, (iii) it possesses sufficient experience, personnel, and resources to complete the Services, (iv) it shall

perform the Services in compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations, and (v) its reports, if any, shall be complete, accurate, and unambiguous.

2. Obligations of UCBOE. UCBOE agrees to pay the Surveyor for the faithful performance of this Contract.

A negotiated cost of services fitting the project size, needs and budget shall be mutually agreed upon prior to issuance of purchase order. Once in agreement, a Purchase Order in the amount of the negotiated cost will be issued to the Surveyor. The total amount due to the Surveyor shall not exceed the amount shown on the purchase order.

3. Project Coordinator. **XXXXX** is designated as the Project Coordinator for the UCBOE. The Project Coordinator shall be the UCBOE's representative in connection with the Surveyor's performance under this Contract. The UCBOE has complete discretion in replacing the Project Coordinator with another person of its choosing.
4. Surveyor Project Manager. **XXXXX** is designated as the Project Manager for the Surveyor. The Surveyor's Project Manager is fully authorized to act on behalf of the Surveyor in connection with this Contract. Substitution of Project Manager must be presented to UCBOE Project Coordinator with a minimum of 24 hour notice and shall include contact information of the newly selected Project Manager.
5. Terms and Methods of Payment. UCBOE will make payment after invoices are approved on a net 30 day basis. Failure to submit all required documents will delay payment. UCBOE will not pay for services or materials in advance without the prior approval of the Finance Officer.
6. Additional Provisions. Surveyor agrees to the Standard Terms and Conditions set forth as Attachment A attached hereto and incorporated herein by reference.
7. Counterpart Execution. This Contract may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each party shall be entitled to rely upon executed copies of this Contract transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

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[SIGNATURES ON NEXT PAGE]**

Attachment A

Standard Terms and Conditions

I. Standard Terms and Conditions for All Contracts

1. Acceptance. Contractor's execution of this Contract and/or acknowledgment of the terms of any applicable purchase order ("Purchase Order"), without timely express written objection, or Contractor's shipment or performance of any part of a Purchase Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of a Purchase Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to hereto (including without limitation any request for proposals or invitation for bids or Contractor's response thereto), and (iv) any other terms and conditions of a written agreement signed by Contractor and UCBOE that deals with the same subject matter (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Contractor and UCBOE with respect to the purchase by UCBOE of the Services and/or Goods (the "Goods" and/or "Services," as appropriate) provided or work performed as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to UCBOE shall control. A Purchase Order constitutes an offer by UCBOE and expressly limits acceptance to the terms and conditions stated therein. No additional or supplemental provision or provisions in variance herewith that may appear in Contractor's quotation, acknowledgment, invoice, or in any other communication from Contractor to UCBOE shall be deemed accepted by or binding on UCBOE. UCBOE hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until UCBOE's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by UCBOE are subject to correction.
2. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed in writing by UCBOE. The award of a term contract neither implies nor guarantees any minimum or maximum purchases.
3. Prices. If Contractor's price or the regular market price of any of the Goods covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods, Contractor agrees to give UCBOE the benefit of such lower price on any such Goods. In no event shall Contractor's price be higher than the price last quoted or last charged to UCBOE unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents.
4. Invoices. It is understood and agreed that orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be sent to UCBOE's accounts payable department with a copy to UCBOE Project Coordinator.
5. Freight on Board. All shipments of Goods are FOB destination unless otherwise stated in the Contract Documents.
6. Taxes. Taxes are included in the Contract Price. Applicable taxes shall be invoiced as a separate item for UCBOE's records.
7. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of Goods, whichever is later.

8. Condition and Packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
9. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Contractor's reasonable control and without Contractor's fault or negligence.
10. Risk of Loss. Contractor shall have the risk of loss of and damage to the Goods subject to the Contract Documents until such Goods are delivered to the destination and accepted by UCBOE or its nominee.
11. Rejection. All Goods shall be received subject to UCBOE's inspection. Goods that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Contractor's expense or may be accepted at a reduced price. UCBOE may require Contractor to promptly replace or correct any rejected Goods Services and, if Contractor fails to do so, UCBOE may contract with a third party to replace such Goods Services and charge Contractor the additional cost.
12. Warranties. Contractor warrants that all Goods delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished. This warranty shall survive any inspection, delivery, acceptance or payment by UCBOE of the Goods and shall run to UCBOE and any user of the Goods. This express warranty is in addition to Contractor's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. In addition to any other rights available at law or equity, UCBOE shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose, including but not limited to consequential and incidental damages.
13. Compliance with All Laws. Contractor warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders. The right of Contractor to proceed may be terminated immediately by written notice if UCBOE determines that Contractor, its agent or another representative, has violated any provision of law.
14. Use of Federal Funds. If the source of funds for this Contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324)
15. Registered Sex Offenders. Contractor acknowledges that state law and school policy prohibit anyone registered or required to register as a sex offender from being present on any UCBOE Property for any reason, whether before, during or after school hours, or on or off of UCBOE Property. Contractor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from UCBOE Property by school staff and/or law enforcement officials and may also be subject to criminal prosecution. "UCBOE Property" includes all property owned or operated by UCBOE, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by UCBOE. If Contractor, any of Contractor's employees, or any of Contractor's subcontractors or employees of subcontractors will have any direct interaction with students, then Contractor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on UCBOE Property.
16. Nondiscrimination. During the performance of the Contract, Contractor shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
17. Conflict of Interest. Contractor represents and warrants that no member of UCBOE or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position

to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Contractor also represents and warrants that, if the Contract is funded by any amount of federal funds, no violation of 2 C.F.R. § 200.318(c) or any other applicable federal conflict of interest law has occurred or will occur. Contractor shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.

18. **Gratuities.** Contractor represents and warrants that no member of UCBOE or any of its employees has been or will be offered or given a gratuity to an official or employee of UCBOE in violation of applicable law or policy.
19. **Kickbacks to Contractor.** Contractor shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a UCBOE Contract or in connection with a subcontract relating to a UCBOE Contract. When Contractor has grounds to believe that a violation of this clause may have occurred, Contractor shall promptly report to UCBOE in writing the possible violation.
20. **Iran Divestment Act.** Contractor certifies that, as of the date listed below, it is not on the Final Divestment List, as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4, in violation of the Iran Divestment Act. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List. The Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and should be updated every 180 days.
21. ***Divestment from Companies that Boycott Israel.*** The Contractor certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81. It is the responsibility of each vendor or contractor to monitor compliance with this restriction. Contracts valued at less than \$1,000.00 are exempt from this restriction.
22. **E-Verification.** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes
23. **Indemnification.** Contractor shall indemnify and hold harmless UCBOE, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Contractor's failure to comply with any applicable law, ordinance, regulation, or industry standard or (b) arising directly or indirectly out of Contractor's performance or lack of performance of the terms and conditions of the Contract. In the event that any Services and/or Goods sold and delivered or sold and performed under the Contract Documents shall be defective in any respect whatsoever, Contractor shall indemnify and save harmless UCBOE, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Services and/or Goods and are contributed to by said condition. In the event Contractor, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of UCBOE in the performance of the Contract Documents, Contractor agrees that it will indemnify and hold harmless UCBOE, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with such entry.
24. **Insurance.** Unless such insurance requirements are waived or modified by UCBOE or risk management ("DIRM"), Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to UCBOE and authorized to do business in the State of North Carolina: Automobile - Contractor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired automobiles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence. Commercial General Liability - Contractor shall maintain commercial general liability insurance that shall protect Contractor from claims of bodily injury or property damage which arise from performance under the Contract. This insurance shall include coverage for contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate. Worker's Compensation and Employers' Liability Insurance - If applicable to Contractor, Contractor shall meet the statutory requirements of the State of North Carolina for worker's

compensation coverage and employers' liability insurance. Contractor shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law. Certificates of such insurance shall be furnished by Contractor to UCBOE and shall contain the provision that UCBOE be given 30 days' written notice of any intent to amend or terminate by either Contractor or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

25. Termination for Convenience. In addition to all of the other rights which UCBOE may have to cancel this Contract or an applicable Purchase Order, UCBOE shall have the further right, without assigning any reason therefore, to terminate the Contract (or applicable Purchase Order), in whole or in part, at any time at its complete discretion by providing 10 days' notice in writing from UCBOE to Contractor. If the Contract is terminated by UCBOE in accordance with this paragraph, Contractor will be paid in an amount which bears the same ratio to the total compensation as does the Services and/or Goods actually delivered or performed to the total originally contemplated in the Contract. UCBOE will not be liable to Contractor for any costs for completed Goods, Goods in process or materials acquired or contracted for if such costs were incurred prior to the date of this Contract or an applicable Purchase Order.
26. Termination for Default. UCBOE may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the Contract by Contractor. In addition to any other remedies available to UCBOE law or equity, UCBOE may procure upon such terms as UCBOE shall deem appropriate, Services and/or Goods substantially similar to those so terminated, in which case Contractor shall be liable to UCBOE for any excess costs for such similar goods, supplies, or services and any expenses incurred in connection therewith.
27. Contract Funding. It is understood and agreed between Contractor and UCBOE that UCBOE's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of UCBOE for any payment may arise until funds are made available to UCBOE's Finance Officer and until Contractor receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. UCBOE shall not be liable to Contractor for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
28. Accounting Procedures. Contractor shall comply with any accounting and fiscal management procedures prescribed by UCBOE to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
29. Improper Payments. Contractor shall assume all risks attendant to any improper expenditure of funds under the Contract. Contractor shall refund to UCBOE any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Contractor shall make such refunds within thirty (30) days after UCBOE notifies Contractor in writing that a payment has been determined to be improper.
30. Contract Transfer. Contractor shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of UCBOE.
31. Contract Personnel. Contractor agrees that it has, or will secure at its own expense, all personnel required to provide the Services and/or Goods set forth in the Contract.
32. Key Personnel. Contractor shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Contractor) assigned to the performance of the Contract without prior written approval from UCBOE Project Coordinator (the individual at UCBOE responsible for administering the Contract).
33. Contract Modifications. The Contract may be amended only by written amendment duly executed by both UCBOE and Contractor.
34. Relationship of Parties. Contractor is an independent contractor and not an employee of UCBOE. The conduct and control of the work will lie solely with Contractor. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Contractor and UCBOE. Employees of Contractor shall remain subject to the exclusive control and supervision of Contractor, which is solely responsible for their compensation.
35. Advertisement. The Contract will not be used in connection with any advertising by Contractor without prior written approval by UCBOE.

36. Monitoring and Evaluation. Contractor shall cooperate with UCBOE, or with any other person or agency as directed by UCBOE, in monitoring, inspecting, auditing or investigating activities related to the Contract. Contractor shall permit UCBOE to evaluate all activities conducted under the Contract. UCBOE has the right at its sole discretion to require that Contractor remove any employee of Contractor from UCBOE Property and from providing Services and/or Goods under the Contract following provision of notice to Contractor of the reasons for UCBOE's dissatisfaction with the Services and/or Goods of Contractor's employee.
37. Financial Responsibility. Contractor is financially solvent and able to perform under the Contract. If requested by UCBOE, Contractor agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by UCBOE's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Contractor, the inability of Contractor to meet its debts as they become due or in the event of the appointment, with or without Contractor's consent, of an assignee for the benefit of creditors or of a receiver, then UCBOE shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
38. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. UCBOE reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
39. Inspection at Contractor's Site. UCBOE reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for UCBOE determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
40. Confidential Information. All information about UCBOE provided to the Contractor or its officers, employees, agents, representatives and advisors (the "Contractor Representatives"), and all copies or other full or partial reproductions thereof and notes, memoranda or other writings related thereto created by Contractor or any Contractor Representative, regardless of whether provided before or after the date of the Contract and regardless of the manner or medium in which it is furnished, is referred to as "Confidential Information". Confidential Information does not include any information that (a) is or becomes generally available to the public other than as a result of an impermissible disclosure by Contractor, (b) was known by or available on a nonconfidential basis to Contractor before it was disclosed by UCBOE or (c) becomes available to Contractor on a nonconfidential basis from a third party whom Contractor does not know to be bound by a confidentiality agreement with, or have an obligation of secrecy to, UCBOE. Except as and to the extent required by law or order or demand of any governmental or regulatory authority, Contractor and Contractor Representatives will (x) keep all Confidential Information confidential and (y) will only disclose or reveal any Confidential Information to Contractor Representatives who must have the information to fulfill Contractor's obligations under the Contract and who agree to observe the terms of this Section. Contractor and Contractor Representatives will not use the Confidential Information for any purpose other than fulfilling Contractor's obligations under the Contract. By way of example and not limitation, Contractor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information. If Contractor is requested or required, pursuant to applicable law or regulation or by legal process, to disclose any Confidential Information, Contractor will provide UCBOE with prompt and timely notice of the requests or requirements so that UCBOE can seek an appropriate protective order or other remedy and will not be prejudiced by delay. If UCBOE does not obtain a protective order or other remedy, Contractor will only disclose that portion of the Confidential Information which Contractor's legal counsel determines Contractor is required to disclose. Upon termination of the Contract or otherwise upon UCBOE's request, Contractor will promptly deliver to UCBOE all Confidential Information in the possession of Contractor or the Contractor Representatives.
Student Information: If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to students or students' official records, Contractor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S.

115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract.

Employee Personnel Information: If, during the course of Contractor's performance of the Contract, Contractor should obtain any information pertaining to employees of UCBOE's personnel records, Contractor agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. This section will survive the termination of this Contract.

41. Intellectual Property. Contractor agrees, at its own expense, to indemnify, defend and save UCBOE harmless from all liability, loss or expense, including costs of settlement and attorney's fees, resulting from any claim that UCBOE's use, possession or sale of the Services and/or Goods infringes any copyright, patent or trademark or is a misappropriation of any trade secret.
42. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Contractor for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Contractor specifically waives any claim for interest.
43. Background Checks. At the request of UCBOE's Project Coordinator, Contractor (if an individual) or any individual employees of Contractor shall submit to UCBOE criminal background check and drug testing procedures.
44. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation.
45. No Third-Party Benefits. The Contract shall not be considered by Contractor to create any benefits on behalf of any third party. Contractor shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third-party benefits.
46. Force Majeure. If UCBOE is unable to perform its obligations or to accept the Services and/or Goods because of Force Majeure (as hereinafter defined), the time for such performance by UCBOE or acceptance of Services and/or Goods will be equitably adjusted by allowing additional time for performance or acceptance of Services and/or Goods equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of UCBOE.
47. Ownership of Documents; Work Product. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by UCBOE. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Contractor pursuant to the Contract shall, at the request of UCBOE, be turned over to UCBOE. Any technical knowledge or information of Contractor which Contractor shall have disclosed or may hereafter disclose to UCBOE shall not, unless otherwise specifically agreed upon in writing by UCBOE, be deemed to be confidential or proprietary information and shall be acquired by UCBOE free from any restrictions as part of the consideration of the Contract.
48. Strict Compliance. UCBOE may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
49. General Provisions. UCBOE's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If action be instituted by Contractor hereunder, UCBOE shall be entitled to recover costs and reasonable attorney's fees. Contractor may not assign, pledge, or in any manner encumber Contractor's rights under this Contract or applicable Purchase Order or delegate the performance of any of its obligations hereunder, without UCBOE's prior, express written consent.
50. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Union County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.

51. Severability. Any provision of this Contract that is determined by any court of competent jurisdiction to be invalid or unenforceable will not affect the validity or enforceability of any other provision. Any provision of the Contract held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

II. Additional Standard Terms and Conditions for Construction Contracts

1. Supervision and Provision for Labor and Supplies. The Contractor will supervise and direct the construction work (the "Work") and shall furnish, provide, and pay for all labor, materials, equipment, machinery, utilities, and services reasonably necessary for the execution and completion of the Work.
2. Coordination of Work and Notification of Progress. The Contractor agrees to coordinate its Work with the work of any other separate contractors or with the work of UCBOE's own forces to avoid delaying or interfering with their work. Contractor shall enforce good order and discipline among his employees and subcontractors on the Project. The Contractor further agrees to inform UCBOE on a regular basis or at UCBOE's request of the progress of the Work.
3. Provision for all Permits, Licenses, and Inspections. Unless otherwise provided, the Contractor shall secure and pay for all permits, licenses, and inspections necessary for the proper execution and completion of the Work.
4. Cleanliness. Contractor shall keep the Project reasonably free from waste materials or rubbish resulting from the Contractor's operations.
5. Additional Warranties. The Contractor warrants that the Contractor has visited the location of the Project and is familiar with all field conditions bearing upon the Contractor's performance of the Work; that the materials and equipment furnished under the Contract are of good quality and new (unless otherwise permitted); that the Work is non-negligent and meets or exceeds the standards ordinarily observed in the industry; and that the Work conforms to the requirements of the Contract and to all applicable codes, ordinances, laws, or regulations. The Contractor further warrants and promises that the Work shall be free from defects and nonconformities in materials and workmanship for a period of one year from the later of the Date of Completion, which is the date UCBOE accepts the Work or such date as the Contractor actually completes all the Work (the "Date of Completion"). During such period, the Contractor will remedy at Contractor's expense nonconformities or defects in the Work within a reasonable time after receiving notice thereof from UCBOE.
6. Indemnity for Subcontractor Payment. In addition to the indemnification obligations contained in the attached terms and conditions to this Contract, the Contractor further agrees to defend and indemnify UCBOE from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of the Contractor's failure to pay subcontractors or materials suppliers.
7. Change Orders. The Contractor agrees that UCBOE may order changes in the general scope of the Work, including additions, deletions, and similar revisions. The parties agree to adjust the Contract Price and Date of Completion to reflect the effects of such changes, which adjustments shall be authorized only upon execution of a written change order (a "Change Order"). In case of emergency or extenuating circumstances or if a construction contingency is provided as stated below, approval of changes may be obtained verbally by telephone or field orders approved by UCBOE Project Coordinator and promptly thereafter substantiated in writing as outlined under normal procedures. The amount of any increase or decrease in the Contract Price shall be by mutual acceptance of a total amount supported by sufficient data and information to substantiate the change. Any decrease in Contract Price for a decrease in the Work will be the reasonable costs of the Work deleted, including a reasonable amount for the decrease in the Contractor's overhead.
8. Performance/Payment Bond. If required by law and/or the bidding documentation, the Contractor agrees to provide a Performance Bond and Labor and Material Payment Bond for its faithful performance in a form reasonably satisfying to UCBOE.
9. Payments Withheld. The UCBOE may withhold payment for the following reasons to the extent permitted under N.C. Gen. Stat. § 143-134.1(e): (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to UCBOE is

provided by the Contractor; (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work will not be completed with the time specified, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; (5) failure to carry out the Work in accordance with the Contract Documents; (6) failure to provide sales tax documentation in accordance with subparagraph 9.3.5; (7) failure or refusal of the Contractor to submit the required information on minority business enterprises; and (8) failure of the Contractor to comply with (a) the provisions of the Sedimentation and Pollution Control Act (N.C. Gen. Stat. § 113A-50 *et seq.*), and/or (b) any Notice of Violation issued by the North Carolina Department of Natural Resources.

10. Retainage. For public construction contracts costing an amount equal to or greater than \$100,000, the UCBOE will retain five percent of the amount of each progress payment on the project for as long as is authorized by N.C. Gen. Stat. § 143-134.1. At all times during the Project, the UCBOE may retain the maximum funds allowed by N.C. Gen. Stat. § 143-134.1. The UCBOE specifically reserves the right to withhold additional funds as authorized by this Contract and N.C. Gen. Stat. § 143-134.1. The Contractor may pay each subcontractor no later than seven days after receipt of payment from the UCBOE and in accordance with N.C. Gen. Stat. § 143-134.1 the amount to which the subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner and in accordance with N.C. Gen. Stat. § 143-134.1.

III. Additional Standard Term and Condition for Designer Contracts (which include Roofing Design Surveyor, Architectural, Engineering, Surveying, and Technical Services)

Additional Insurance. In addition to the insurance required pursuant to Section 22 of the Standard Terms and Conditions for All Contracts, the Contractor certifies that it currently has and agrees to purchase and maintain during its performance under the Contract the following insurance from one or more insurance companies acceptable to UCBOE and authorized to do business in the State of North Carolina: Professional liability insurance in commercially reasonable amounts as reasonably determined by UCBOE.

IV. Additional Standard Terms and Conditions for Information Technology Contracts

1. Definitions.

"Hardware" means the hardware the Contractor utilizes in the Hosted Environment for delivery and maintenance of the Hosted Software Services.

"Hosted Environment" means the Hardware, system software, hosting support software, network connectivity, and facility used by Contractor to support the Hosted Software Services.

"Hosted Software Services" means the application, including the Hosted Software and any applicable Third-Party Software, as run on the Hosted Environment.

"Hosted Software" means the software owned and controlled by Contractor or Contractor's third-party contractor that supports the Hosted Software Services.

"Support Services" means application and technical support required to maintain the performance, uptime and connectivity of the Hosted Software Services for UCBOE access and use, including without limitation, telephone support, error correction, maintenance, and installation of Updates and Upgrades to the Hosted Software.

"Updates" means (i) modifications to or releases of the Hosted Software that (a) add new features, functionality, and/or improved performance, (b) operate on new or other databases, operating systems, or server platforms or (c) extend the Hosted Software functionality to take advantage of advances in coding

language, hardware, network or wireless infrastructures; and (ii) deviation corrections, bug or error fixes, patches, workarounds, and maintenance releases.

“Upgrades” means any new version or new release of the Hosted Software typically provided on an annual or bi-annual basis by the Contractor that includes new features, functions, support or service that were not in place with the immediately prior version.

2. Grant of License. Contractor grants to UCBOE for the term of this Contract a non-exclusive, non-transferable license to access and use over the internet the Hosted Software (the “License”).
3. Updates and Upgrades. Contractor will make certain limited and applicable Hosted Software Updates and Upgrades available to UCBOE at no additional cost. All such Updates and Upgrades shall automatically become subject to the benefits and terms of this Contract and shall automatically be considered part of the License granted under this Contract.
4. Security. Contractor’s Hosted Environment shall maintain security measures in place to help protect against the loss, misuse, and alteration of the Hosted Software Services, and specifically the Confidential Information provided to Contractor by UCBOE.
5. Warranties. Contractor warrants the following: (a) Contractor has the full authority to grant the License; (b) the Hosted Software is free from material defects or viruses; (c) the Hosted Software contains no disabling devices; and (d) the Hosted Software conforms to all material specifications set forth in the documentation and any other written material provided to UCBOE for any purpose. Without limiting any other remedies available to UCBOE under this Contract, at law or in equity, in the event that any Hosted Software does not conform to the warranties set forth for the Hosted Software herein, Contractor shall, at UCBOE’s option, promptly correct or replace such Hosted Software and, in either case, Contractor shall perform any Support Services or other work required to restore the Hosted Software to the state that existed prior to any such breach, all at Contractor’s expense. UCBOE reserves the right to reject the Hosted Software and to hold Contractor responsible for any loss, direct or indirect, caused by any such breach of warranty. In the event Contractor is or becomes aware of a problem with any item of Hosted Software, Contractor shall notify UCBOE upon such determination. Acceptance or use of the Hosted Software shall not constitute a waiver of any claim under any warranty.
6. Effect of Termination and Orderly Transition. Upon termination or expiration of this Contract for any reason, Contractor will cooperate in good faith with UCBOE to provide for an orderly transfer of the Goods and Services and Confidential Information to UCBOE or UCBOE’s successor vendor (“Orderly Transition”) and according to the terms of this section.
 - a. Scope of Work for Orderly Transition. Within thirty (30) days of notification by UCBOE that it will transfer Goods and Services to itself or a successor vendor, the parties will create and execute a scope of work document detailing tasks, the responsible parties for individual tasks, and timeframes for completion of tasks necessary to complete an Orderly Transition. The final, executed Orderly Transition scope of work shall be incorporated into this Contract and become subject to its terms. Contractor’s failure to (a) cooperate in developing the Orderly Transition scope of work, (b) execute an Orderly Transition scope of work, or (c) abide by the executed Orderly Transition scope of work shall be deemed a material breach of this Contract.
 - b. Time Frame. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor shall continue to provide Goods and Services while UCBOE migrates its Confidential Information from Contractor’s Hosted Software Services in the Orderly Transition process. Contractor agrees that, as part of the Orderly Transition process and within the specified time frame, it will transfer to UCBOE all of the Confidential Information provided to Contractor by UCBOE pursuant to this Contract. Contractor will provide the Confidential Information in commercially reasonable electronic format as agreed in the Orderly Transition scope of work at no additional cost.
 - c. Time and Material Costs Only. UCBOE will be obligated to pay for time and materials at a reasonable hourly rate of no more than \$75/hour for the Orderly Transition. No other fees will be assessed for the Orderly Transition. Fees shall be agreed upon in advance as part of developing the scope of work referenced in subsection (a) above.

- d. Destruction of Confidential Information after Orderly Transition. Unless otherwise mutually agreed in an executed Orderly Transition scope of work, Contractor agrees that after returning all Confidential Information to UCBOE pursuant to subsection (b) above it will destroy all remaining copies of Confidential Information and back-up Confidential Information in its possession, contained in or on any medium (such as a storage area network or "SAN") or as may be stored offsite, within thirty (30) days of completion of Orderly Transition. Contractor shall provide UCBOE with a detailed summary of the destruction process and standards to be utilized by Contractor with respect to the Confidential Information, and UCBOE shall approve such process and standards prior to Contractor commencing such destruction.
7. Intellectual Property Warranty. In addition to the warranties set forth elsewhere in this Contract with respect to the Goods and Services, Contractor expressly represents, warrants and covenants that neither the furnishing of Hosted Services to UCBOE hereunder, nor does the Hosted Software, violate, in whole or in part, any provision of any law, common law or regulation concerning copyrights, trade secrets, trademarks, tradenames, service marks, patents or other provisions regulating or concerning intellectual property rights.
8. Additional Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless UCBOE, its and directors, officers, managers, employees and agents, from all suits, claims, costs, damages and other liabilities, including reasonable attorneys' fees as incurred by counsel of UCBOE's choice, relating to or arising from (a) Contractor's failure to maintain the security and integrity of Confidential Information, the Hosted Software Services and the Hosted Environment; (b) any claim for infringement of any copyright, trade secret, trademark, tradename, service mark, patent, or other law or regulation concerning intellectual and/or proprietary property rights; and (c) any claims by third party interests in the Hosted Software.
9. Data Use. Notwithstanding the foregoing, Contractor acknowledges and agrees that all Confidential Information is proprietary to and owned exclusively by UCBOE, whether provided in tangible or electronic form and whether entered into any software or Hosted Software Services owned or licensed by Contractor (including without limitation the Hosted Software and Hosted Software Services) or otherwise provided in connection with any products provided and services performed by Contractor (including without limitation the Goods and Services) and whether to, by or through a Contractor-affiliated ASP or other Hosted Software Services. Furthermore, Contractor shall not sell, market, or commercialize Confidential Information, create derivative products or applications based on Confidential Information or otherwise use Confidential Information in any manner unrelated to the performance of Contractor's obligations under the Contract. Contractor shall not share Confidential Information with any parent or subsidiary company of Contractor or any other Contractor-affiliated entity without the express prior written consent of UCBOE detailing the scope of allowable disclosure. Contractor agrees that if it breaches this section, UCBOE may, at its option, pursue any or all of the following remedies: (a) immediately terminate this Contract without liability to Contractor; (b) seek an injunction without posting a bond; and (c) pursue whatever other remedies may be available to it at law, in equity or pursuant to this Contract.